

No. 15580

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United States  
Court of Appeals  
for the Ninth Circuit

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E. S. McKENDRY, FLORENCE LOWE  
BARNES, also known as Pancho Barnes and  
WILLIAM EMMERT BARNES,  
Appellants,  
vs.

UNITED STATES OF AMERICA, Appellee.

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Transcript of Record

In Two Volumes

VOLUME II.

(Pages 309 to 606, inclusive)

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Appeal from the United States District Court for  
the Southern District of California,  
Northern Division

FILED

OCT 15 1957

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Testimony of DeWolfe H. Miller.)

The Court: Now, does that map indicate when the relocation was made? [143]

The Witness: The relocation which is shown on this particular map shows the change of 12 December 1947.

The Court: Now, will you point out where that relocation is?

The Witness: Here (indicating) was the existing runway, and here (indicating) is the relocated.

The Court: Now, what is there to indicate that when that particular relocation was made—I want to pin it down to that particular relocation.

The Witness: I am missing your point there, sir.

The Court: Well, you say there was a relocation made on December 12, 1947.

The Witness: That is what this map shows, yes, sir.

The Court: Will you point out where that relocation is?

The Witness: The relocation shown on this map would put the new runway generally running north-east-southwest, with the southwest approach zone over the Barnes airfield.

The Court: It isn't clear to me where it was before and where it is now.

The Witness: Here the old existing runway is, to the south (indicating).

The Court: Where is the new?

The Witness: It will extend from there (indi-

(Testimony of DeWolfe H. Miller.)

cating) to there (indicating), the actual runway on this plan, with the approach zones. [144]

The Court: Where is the Muroc Dry Lake?

The Witness: Down in this area here (indicating), out towards——

Miss Barnes: This (indicating) will make it much clearer.

The Court: Wait.

The Witness: This (indicating) is essentially the edge of the lake right here, Rogers Dry Lake.

The Court: The west edge of the lake?

The Witness: Yes, sir.

The Court: How far does it extend?

The Witness: Rogers Dry Lake?

The Court: Just approximately.

The Witness: I think altogether about 15 miles.

Q. In what direction does it extend?

The Witness: Generally in a north-south direction.

The Court: Well, would it extend in a northeasterly direction from the point you marked here, or would it just be on the west edge there?

The Witness: No, sir. This area in here (indicating) is relatively flat.

The Court: Is that part of the lake?

The Witness: I believe the lake extends right to about here (indicating). [145]

Q. (By Miss Barnes): Colonel Miller, is this necessarily a relocation of the present runway that is used, or could it have been a relocation of other runways that were also shown? Could it be a re-

Testimony of DeWolfe H. Miller.)

location of some other runway besides this one you pointed out, do you know?           A. No.

Q. You don't know?

A. As far as I know, it could not. When the final construction was approved, it was for a particular test type runway, something special in the Air Force.

The Court: Would you consider this a preliminary matter, or is this a final—

The Witness: This is, as far as I would consider it, a preliminary matter. This is not necessarily the final one although it may coincide with the location that was approved under the approved Master Plan.

Q. (By Miss Barnes): Who approved it there?

A. Colonel Gilkey is the only one that approved it here, but his approval is not final.

The Court: What is the date of his approval?

The Witness: The basic map was approved by Colonel Gilkey apparently on 12 March. The revisions—

The Court: What year?

The Witness: 1947. The revisions— [146]

The Court: Now, you made some statement about Colonel Gilkey's approval.

Read that, Mrs. Buck.

(The record referred to was read by the reporter.)

The Court: You may proceed.

Miss Barnes: I have an Engineers Corps map—

(Testimony of DeWolfe H. Miller.)

The Court: I think this map had better be marked for identification. Let it be marked——

The Clerk: No. 6.

The Court: ——Pancho Barnes' No. 6 for identification.

(The map referred to was marked as Pancho Barnes' exhibit 6 for identification.)

Miss Barnes: Mr. Weymann, would you look at this exhibit?

(Parties examining the map.)

Miss Barnes: You stated on September 9th that the Defendants' property was in the very center of the Edwards Air Force Base itself.

Mr. Weymann: I didn't testify.

What are these marks (indicating)?

The Court: I didn't hear that statement.

Mr. Weymann: I say I want to know what the marks are.

The Court: Do you know what they are?

Mr. Weymann: No, I don't.

Miss Barnes: The green line, the green crayon [147] marks—the Defendants put these marks on indicating the proposed new runway, the relocated runway that is on the other map,—this is the present map, an Engineers' map, your Honor, absolutely accurate, as to scale.

This (indicating) is the present runway they are now using; and we have made the exact flight patterns. They show these flight patterns coming on the Defendants' property, which is erroneous. The



(Testimony of DeWolfe H. Miller.)

new runway which will be put in will come across the Defendants' property.

They testified in their brief—Colonel Akers testified that it would have a two-mile clear way, which means they are going to have to abolish the entire Base and wipe out entirely the Air Base before they can use this runway; before they can go to grading or paving it, they will have to move a good portion to the Air Base to get that going. They wanted possession of all property, because they said they had to have it—

Mr. Weymann: I object to argument.

The Court: You don't argue now.

Miss Barnes: I want to ask Colonel Miller about that particular portion.

Q. Colonel Akers testified, Colonel Miller,—I am addressing this to you — Colonel Akers testified there would be a two-mile clear way on each side of the new runway when it was completed, one mile [148] on each side, two miles altogether. These lines indicated, here is the 15,000-foot strip—incidentally, this map is to scale; each of these squares is a square mile. This map shows the 15,000-foot runway, as near as we could get it from the Air Base map and the map we showed you this morning, on each side it will have a mile square.

Now, you are an installations officer here. In all this clear way, which we have only indicated there and haven't extended as they have in the maps in the exhibit, when this is completed what buildings is this going to necessitate the removal of?

(Testimony of DeWolfe H. Miller.)

A. Essentially all that now exist.

Q. On the entire Base, is that right?

The Court: What was the answer, Mrs. Buck?

(The answer referred to was read by the Reporter.)

The Witness: That is the bulk of what exists and what is commonly called and which we refer to as the old Base. This does not affect the north Base or the Rocket Static site to the east,—

Q. (By Miss Barnes): When you say “north Base”, you refer to the buildings grouped up at this end (indicating)?

A. Right.

Q. It would include—

A. It means essentially you take this Base and abandon it. [149]

The Court: It would include all within those two lines that run up a mile each side of the runway? That would be all runway, then?

Miss Barnes: That is the hospital, too (indicating).

The Court: All within that space?

The Witness: We do have, as testified before, an approach angle that covers the height of the buildings in certain areas. This (indicating), however, would be cleared out.

The Court: The Court will take a recess at this time.

(Short recess taken.)

The Court: Proceed.

Q. (By Miss Barnes): You made a statement, Colonel Miller, that the Air Force Base at Muroc

(Testimony of DeWolfe H. Miller.)

had been used as a training base until 1946. Will you clarify that?

The Court: Read the question, Mrs. Buck.

(The question referred to was read by the Reporter.)

The Witness: The main mission of the Base for the general period of 1940 to 1946 was for training of Air Force Personnel.

Q. (By Miss Barnes): Why was it for training at that time, do you know that answer, Colonel?

A. No, I do not. I presume to take advantage of the climate and the dry lakes. [151]

\* \* \* \*

Q. Colonel Miller, if you will, look at this map. This is an Army Engineers map, and it is absolutely square scale. Each one of these squares represents a square mile. Each one is a square mile. If you would care to count these squares, you could locate everything in mileage.

If this entire map comprises the Air Force Base at its completion,—that is where it goes, just the other side of Rosamond Lake—would you say the center of the proposed property, not the actual Air Force Base but the proposed property, would be about this location (indicating)? Would you like to count those square miles and determine that?

A. The cross you have marked is approximately the center of the map.

Q. Then on the existing Air Force Base as it exists now, the County Road runs up here (indicating); would this (indicating) be the approxi-

(Testimony of DeWolfe H. Miller.)

mate center of Edwards Air Force Base at this time?

Mr. Weymann: Objected to, same question under another guise, as irrelevant and immaterial.

Miss Barnes: This is a different question.

Mr. Weymann: It calls for the same answer.

Miss Barnes: Read the last question and answer, and read this question.

The Court: Mrs. Buck, read the last question [154] and answer, and the pending question.

(The record was read.)

The Court: That is the green cross?

Miss Barnes: Yes.

The Court: Any objection?

Mr. Weymann: Read it. I made the objection.

(The objection was read.)

The Court: The objection is overruled.

The Witness: Assuming that this is the present west boundary (indicating),—

The Court: What is the answer?

The Witness: Assuming that this line is the present west boundary,—

The Court: How is that designated on the map?

The Witness: "Military Reservation approximate."

The Court: All right, go ahead with your assumption.

The Witness: —the green cross would be near the center of that property.

Q. (By Miss Barnes): Will you please, Colonel Miller, authenticate this map by the—

(Testimony of DeWolfe H. Miller.)

A. This is a map reprinted from military edition for civil use pending revision for standard issue. Sold and distributed by the U. S. Geological Survey.

Miss Barnes: I would like to offer this map as evidence, your Honor. [155]

Mr. Weymann: Objected to. No competent foundation laid, and being irrelevant and entirely immaterial to any of the issues before the Court at this time, which is the question of the good faith of the Secretary of the Air Force in determining that the acquisition of the subject property here necessary for the purposes of the Flight Test Center at Edwards Air Base.

The Court: The objection is sustained. Let it be marked for identification as Pancho Barnes Exhibit No. 7.

(The map referred to was marked as the Pancho Barnes exhibit No. 7 for identification.)

Miss Barnes: Could we compare and refer to this map as against the maps that are already in evidence?

The Court: Well, that will be a question that the Court will have to decide when it comes up, Miss Barnes. It is marked for identification, and the Clerk will have it in his own possession.

Miss Barnes: I could do that with this witness, if you wish.

The Court: If it would serve any purpose, you may do it now.

(Testimony of DeWolfe H. Miller.)

Miss Barnes: I would like to ask this witness, because of his position and his business, could he tell us when this runway will be completed, this proposed runway. [156]

The Witness: I believe the contemplated completion date is December next year.

The initial paving is to start in about 30 days.

Q. (By Miss Barnes): That includes moving the buildings where this green mark is, and other buildings?

A. Yes. The buildings to the south of the new runway will be razed out of existence, and we will move generally other construction which is being accomplished north of the new runway.

Q. Colonel Miller, are you familiar with the plans of the Air Base, the future plans of the Air Base? A. In general.

Q. Here on this map it shows that this line out around here (indicating) is Military Reservation. It goes on out there, and it comes down here (indicating). Would you say that is the approximate location of the Wherry Housing?

A. I would say it is the approximate location, yes.

Q. Do you know how many homes are there in the Wherry Housing, approximately?

A. I believe there are 1,050.

The Court: Where are they located?

Miss Barnes: In this area, your Honor (indicating).

(Testimony of DeWolfe H. Miller.)

Q. Approximately how many people live in that area, including the children? [157]

A. Somewhere in the neighborhood, I would imagine, between four and five thousand.

Q. Are there public schools in this area?

A. They are under construction.

Q. Where do the children go to school now?

Mr. Weymann: Objected to, immaterial.

The Court: What is the materiality of that? Just don't answer that. It is immaterial.

Q. (By Miss Barnes): Are you familiar with the runways laid out on the dry lake?

A. I am to a general degree.

Q. There is a north and south runway that isn't marked on this map. These other two runways, are they approximately as marked on this map?

A. I am familiar with the north-south; I am not too familiar with the two you have shown on your exhibit.

Q. Could you roughly mark here the north-south runway?

A. I believe it extends generally from the railroad tracks south.

Q. Could you mark that on the map, sir?

A. Somewhere in this general neighborhood (indicating).

Q. How far south does it go?

A. I would say probably pretty close to the [158] full length of the lake. We are trying to take maximum advantage of that surface.

(Testimony of DeWolfe H. Miller.)

The Court: Is that brown area the lake?

The Witness: Yes, sir. This (indicating) is the flat portion of the lake.

Q. (By Miss Barnes): Have you seen the east-west runway here on the south of the lake recently?

A. No, I have not.

Q. Would you say that that (indicating) appears to be the direction in which it goes?

A. I can not answer that question.

Q. Colonel Miller, is that (indicating) the railroad that crosses the dry lake?

A. I believe that is the old route.

Q. Is that railroad still in use?

A. It is as of this date, and the new track re-locating it is essentially completed.

Q. When will the new railroad be in operation?

A. The last date we had on that, I believe, is December of this year.

Q. Is it not true, Colonel Miller, that the mud mines are still working this portion of the lake (indicating)?

Mr. Weymann: Objected to, irrelevant, immaterial.

The Court: What is the materiality of it? [159]

Miss Barnes: Well, your Honor, as you realize, the Air Force is trying to get rid of us. They said they wanted to throw us out in 30 days and, at the most, 60. There is no reason they should do so, when other people are allowed to go on and do things. Right where they are testing in that lake, mud mines are still operating. I think it is pertinent.



(Testimony of DeWolfe H. Miller.)

Why should we be discriminated against in such a manner? It is simply a part of the bad faith that is throughout this entire thing.

The Court: What would you say is the distance from where Mr. Meyers is working to the north-easterly edge of the runway?

The Witness: Of the new runway, sir.

The Court: Yes.

Q. (By Miss Barnes): The new runway isn't in use at all? A. No.

Miss Barnes: There is another runway here.

The Court: I am talking about the one in green.

The Witness: Approximately two and one half miles.

The Court: Whom does he represent, Bud Meyers? You may answer that question.

The Witness: I think, sir, she is referring to the mud mines which have been in operation on Muroc Dry Lake for a large number of years. [160]

It is my understanding at the present time that the operation is being carried on there to clean up the pits preparatory to back fill.

The Court: You mentioned someone's name, I think, that was working there.

Miss Barnes: No, I just mentioned "mud mines." They take clay out of there, earth, for various uses.

The Court: Oh, I understand. The objection is sustained.

Q. (By Miss Barnes): How long will it take,

(Testimony of DeWolfe H. Miller.)

Colonel Miller, to remove the railroad and refill these mud mines, before this runway (indicating) could be used?

A. The railroad track will probably be removed within the present year. The mud mines will probably be back filled in somewhat near the same time. You can operate from that runway, if you had to and wished to take a calculated risk.

Q. When you say "the present year", you mean within the next month or so?

A. I am sorry; I mean—somewhere in the end of 1954.

Miss Barnes: I think that is all.

#### Redirect Examination

Q. (By Mr. Weymann): Colonel Miller, you were asked, on cross examination by Miss Barnes, regarding the certain buildings located within the area of the clear way. [161]

Do you know the calculated useful life of those buildings at the time they were constructed?

A. The bulk of the buildings were referred to as theater of operation type, and were designed for a useful life expectancy of five years.

There were a few buildings what were referred to as immobilization type, designed for a life expectancy of ten years. [162]

\* \* \* \* \*

#### Recross Examination

Miss Barnes: I would like to ask Colonel Miller

(Testimony of DeWolfe H. Miller.)

about the two big hangars on the Base, the gigantic hangars there.

Q. Will you please explain to his Honor about them.

A. The two large hangars, which you refer to, are to be moved to the new Base.

Q. Will you state the size of those hangars?

The Court: Well, is that material, as long as they are to be moved?

Miss Barnes: Well, he testified they weren't permanent structures. The hangars, with many other things, your Honor, were permanent structures on the Base, and they were set there——

The Court: He says they are to be moved as part of this operation.

That is correct, isn't it?

The Witness: That is correct.

Miss Barnes: That is all.

Mr. Weymann: No further questions, your Honor.

The Court: You may stand aside.

(Witness excused.) [163]

\* \* \* \* \*

The Court: Well, the Court sustained the motion to strike on the basis his testimony was immaterial, and the order may still stand.

You may call your next witness.

Miss Barnes: Well, we have Colonel Akers on the stand, your Honor, from the other day.

The Court: Colonel Akers may resume the stand.

The Clerk: You have been sworn.

## MARION J. AKERS

a witness called by the Defendants under Section 43(b), having been previously sworn, was examined and testified further as follows:

Miss Barnes: May we refer, your Honor, to the exhibits of the three maps which we had in court the other day here?

The Court: Yes, you may. [166]

Examination—(Continued)

\* \* \* \* \*

Q. (By Miss Barnes): Colonel Akers, in looking at this map in front of you now, which is labeled "Enclosure No. 1", would you say—what does this yellow spot indicate? [167]

A. The yellow spot indicates the Barnes and McKendry property, as indicated on the map.

Q. Would you say that was in the center of even—well, would you say that was in the center of the area that is shown there?

A. What area are you referring to?

Q. That which is in blue, or green, whatever it is, the color of the map.

A. No, I would say it is not in the center of the area as shown in green on this particular map.

\* \* \* \* \*

The Witness: I can count the number of runways indicated on the map in front of me labeled "Enclosure No. 2", if the Court desires.

The Court: Well, you heard the question, Colonel.

The Witness: I would say there are eight.

Q. (By Miss Barnes): Do each of those run-

(Testimony of Marion J. Akers.)

ways show these paddle-like extensions? I don't know what they call them; there is an extension on the map.

A. Would you mind showing me what you are referring to?

The Court: Will you talk a little louder, please. You are standing so close to the witness, Miss Barnes, the two of you regulate your voices to reach each other.

The Witness: I would like to know what she indicates as "paddle-like extensions."

Q. (By Miss Barnes): These paddle extensions to the runway. The runway runs so far, then you show an extension.

Do each and every one of those runways show that extension? [170] In other words, is this (indicating) an extension of that runway? This happens to be colored red, but you also show other extensions there.

Each one of the runways I counted has the so-called paddle extension, as you refer to it.

Q. On both ends of it?

A. At a hasty glance I would say yes.

Q. In referring to the transcript of September 9th, Colonel Akers,—I want you to look at this right with me—under questioning by Mr. Weymann, will you read your answer?

I will ask the question:

"Now, with reference to Enclosure No. 2, what does that purport to show?"

(Testimony of Marion J. Akers.)

Will you read your answer? You may read it out loud.

The Court: What page is that?

Miss Barnes: That is on page 16 of the transcript of September 9th; starting at line 17 of page 16. [171]

\* \* \* \* \*

Friday, October 30, 1953, 2:00 p.m.

### MARION J. AKERS

the witness on the stand at the time of the adjournment, resumed the stand for further examination and testified as follows:

#### Examination—(Continued)

The Court: Mrs. Buck, read the last question.

(The record was read as follows: “Q. Starting at your answer there, will you read that, Colonel Akers?”)

Q. (By Miss Barnes): Page 16. Will you read the answer?

A. “Enclosure No. 2 — may I borrow a pencil, please — again shows the new runway, the master test runway, in this location coming out here (indicating), with a flight path. It shows the existing runway presently in use, which is this runway coming out in this direction (indicating).”

Miss Barnes: Read on.

The Witness: (Reading)

“The Court: That is the upper read mark?”

“The Witness: That is the flight zone. This (in-

(Testimony of Marion J. Akers.)

dicating) is the runway itself, which ends here and here (indicating). The airplanes taking off to the southwest fly in this general area on take-off, auxiliary [173] to climbing speed and so on. Approaching for landing the other way, they come in in this direction (indicating).

“The Court: What is the other?”

“The Witness: This runway”——

The Court: Has he read enough?

Miss Barnes: That is fine. That is all I want.

Q. I have one other thing, Colonel Akers. I would like you to take I think it is Enclosure No.— Colonel Akers, this (indicating) is Enclosure No. 2. I have very carefully, several of us working on it, scaled it as correctly as we could, and have drawn this runway on our big map, have drawn this particular runway (indicating) on our big map, the Engineers’ or Geodetic map in court.

I would like you to compare that runway as drawn there with the Geodetic runway of the government, to see if it is accurately placed. Will you do that, please?

Mr. Weymann: What is the purpose of that?

Miss Barnes: Mr. Weymann, the purpose is this: There has been a great deal to do with these paddles coming on, converging across my property. I feel I can prove those paddles not only don’t converge on my property, but this runway converges over the Wherry Housing, where the Colonel testified there were four or five thousand people.

In other words, what I am trying to show, if the

(Testimony of Marion J. Akers.)

charge is true, and you are interested in the life of people, this [174] is the pattern for this runway, and these are patterns you have converging across the defendants' property; and it is only fair if these patterns going across the defendants' property are dangerous to the defendants and their life and limb, this is equally dangerous to the four or five thousand people living in the Wherry Housing.

As Colonel Miller indicated on the other map, that (indicating) is the approximate location. This comes into that (indicating), and the school children and other people.

I think it is only fair to show the Judge the same condition holds even more potently responsible over the lives of these thousands of people and children as it does over our ranch, if those paddles actually extend to those.

Our map shows if these paddles extend out north of them, touch our ranch,—

Mr. Weymann: Why not ask the witness?

Miss Barnes: I have asked him. The Judge has the picture of it.

The Witness: Your Honor, so as to speed things up, I can answer the question very simply.

The Court: You know what the question is. Just answer.

The Witness: I feel I understand the question.

That is, to the effect of the extension of this flight pattern coming from the lake bed across Wherry Housing.

The Court: I think you better designate it.



(Testimony of Marion J. Akers.)

The Witness: It is the lake bed runway shown in Enclosure No. 2, the northwest portion of Rogers Lake.

The Court: That is Exhibit No. 3, Enclosure No. 2.

The Witness: The answer to the question is simply this, your Honor: Aircraft or other flying vehicles do not take off on this runway (indicating) in the direction of the Housing area. That is prohibited. So there is no flying from that runway across the Housing area.

The Court: All the taking off is to the northeast?

The Witness: Yes. On that runway. Take-offs are limited to the northeast, because of the Housing area.

Q. (By Miss Barnes): Why did you show that pattern, then, on this map, Colonel Akers?

A. It may have been an oversight. It is normal, in showing a runway, to show the approach zones to it, in a drawing.

Miss Barnes: Would you have an objection, Mr. Weymann, to letting me show the Judge the big map as to the way the flight pattern goes, with respect to the way it goes over ours, when it is in proportion? It has been testified this map is not exact. We have a map that is exact.

The Witness: May I make a statement?

The Court: Mr. Weymann has a question to answer.

Mr. Weymann: I haven't any objection, your

(Testimony of Marion J. Akers.)

Honor, but I [176] don't see that the map would expand the answer given by the Colonel. I am simply trying to save time.

The Court: Well, we are trying to save time.

Miss Barnes: I think it is very important, your Honor, because——

The Court: The Court can see the paddle as designated on that map; but the ground rules prevent any take-off in a southwesterly direction.

Miss Barnes: I would like your Honor to see our map now on which we have very carefully drawn these paddles, so to speak, in proper scale. This (indicating) is not to scale, if your Honor please. They so testified themselves.

The Court: I want to know, is that approximately correct?

The Witness: That is approximately correct, your Honor.

The Court: It seems to me that question could be well answered by that statement that that is approximately correct, but the ground rules say that the take-off must be in a northeasterly direction; so just pass that, Miss Barnes.

Miss Barnes: Let that one go. All right, I am through with the Colonel, then.

Mr. Weymann: At this time, if the Court please, I would like to offer as Plaintiff's Exhibits those three documents—I think they are marked Defendants' Exhibits 2, 3 and 4 for identification. I would like to offer those now as Plaintiff's Exhibits. [177]

(Testimony of Marion J. Akers.)

The Court: Well, which ones are they, Mr. Weymann?

Mr. Weymann: The Enclosures 1, 2 and 3.

The Court: They are marked for identification.

Mr. Weymann: They are marked for identification.

The Court: Well, the Court will permit them to be marked as Joint Exhibits Nos. 2, 3 and 4.

Mr. Weymann: That is satisfactory, your Honor.

Miss Barnes: Yes, indeed, your Honor.

(The documents heretofore marked Pancho Barnes' Exhibits 2, 3 and 4, were received in evidence as Joint Exhibits 2, 3 and 4.)

Mr. Weymann: Now, may I have those, after they are marked. While the Clerk is marking them, I think I can resume the examination.

### Redirect Examination

Q. (By Mr. Weymann): Colonel Akers, some question was raised as to whether or not those exhibits were the identical plans, the identical maps, which you referred to in your examination of September 9th, and whether they are the same maps unaltered and unchanged.

Miss Barnes: Your Honor,—

The Court: I think he has answered that.

Miss Barnes: He has answered that, your Honor. I am not trying to make any issue or impeach anyone. All I want to do is get at the truth of the matter. As far as I am [178] concerned, I am not making any contest on those maps. [179]

\* \* \* \* \*

(Testimony of Marion J. Akers.)

Miss Barnes: Now,—

Mr. Weymann: Just a moment. I am examining the witness.

Q. Could you indicate on Enclosure No. 2 approximately where that landed?

A. It landed in this general area here (indicating), as indicated by the pink.

The Court: Mark it with an "A" there.

Miss Barnes: Mr. Weymann, was that an airplane he is referring to?

Q. (By Mr. Weymann): Will you answer the question, Colonel?

A. It was an aircraft, an experimental aircraft, that had difficulty in flight.

Miss Barnes: Were there lives lost?

The Court: You may cross examine later.

The Witness: There were no lives lost in this case.

Q. (By Mr. Weymann): Was there any property damage?

A. I can't answer that question. As yet I haven't had time to determine the extent of damage to property.

Q. Now, Colonel, based on your knowledge and experience of the operations in that Test Center, are you of the opinion that there is a hazard and a danger to life and limb, and danger to property within the main runway clearway, as delineated on Enclosure No. 2? [182]

A. That is correct. I feel there is, not only

(Testimony of Marion J. Akers.)

within that area, but within the area described on the said exhibit, generally within the area defined as the boundary or ultimate boundary of the installation.

That is one of the prime reasons that the Air Force has seen fit to approve the expansion of the Test Center and Congress has also seen fit to approve it and appropriate funds for the acquisition of the property. One of the reasons for it is safety.

The Court: Colonel, will you sit back a little and hold the map in your hand. It would be much easier for me to see it.

The Witness: In the conduct of our mission at the Center, our primary mission is to conduct the flight tests on the new aircraft that will in the years to come—say three, five or seven years from now—be the bulwark of our defense and offense of the Air Force for protection of the country.

The aircraft tested today may not, probably, get into the hands of the using agency for some three to five years. Consequently, there is danger involved on these flight tests; and in order to have the least amount of damage done to persons, to private property, to industry and other enterprises, it is deemed necessary to have the area outlined here as a general area in which to operate, from the standpoint of safety. We feel that ultimately it will save the government [183] much money, because of the accidents or damage that might occur to the ground or the property there, and loss of life, had it been built up by individuals, and so on.

(Testimony of Marion J. Akers.)

The Court: Well, the Court is interested in the lives, as well as the money.

The Witness: Naturally we are interested in loss of life also, your Honor.

The Court: Let me ask you: You have explained—Hold it over so Miss Barnes can see it.

Miss Barnes: I know it. I memorized this, too.

The Court: You explained to the Court these two loops. Explain it again.

The Witness: This straight line through here (indicating) is the course flown by aircraft undergoing speed tests, any altitude. These dumb-bells or loops on the end are turn-around points. The aircraft flies one direction, turns around, and flies back the other direction.

The Court: As delineated on the map, what is the distance approximately between the two loops?

The Witness: The distance between the two loops, your Honor, would be in the neighborhood of 18 miles, I would say, statute miles.

The Court: And where is the work being done now, on this map?

The Witness: You mean the construction work?

The Court: Yes, whatever work is being done for the purpose of completing this runway and this system that you have in mind. Where is the work being done now?

The Witness: The construction work in general is being done in this area (indicating) on the runway. Around up here on the taxi-way ramp area;

(Testimony of Marion J. Akers.)

and the building area, roads, and so forth, up here (indicating), there is construction work.

The Court: And how far would that be from Miss Barnes' property?

The Witness: Offhand, I would estimate it would be in the neighborhood of three miles, statute.

The Court: Now, is there any degree of reasonable likelihood that with the work being done here (indicating), three miles away from her property, that her property or anyone there would be injured?

The Witness: Yes, sir. The likelihood exists, because the aircraft are flying over this area every day.

Miss Barnes: I think he didn't understand the question there, your Honor. I was confused. Were you asking about the work to the runway itself?

The Court: No. I think I will have Mrs. Buck read the question.

(The record was read as follows: "Now, is there any degree of reasonable likelihood, with the work being done here, three miles away from her property, that her property [185] or anyone there would be injured?")

The Court: Do you understand the question?

Miss Barnes: Well, it is all out of kilter. We will get it straight on cross examination.

The Court: All right.

Do you understand it?

The Witness: I am not sure, your Honor, but let me answer it this way: The work with respect to

(Testimony of Marion J. Akers.)

constructing the runway itself, that is, the building of runways or buildings, that is not the work that endangers her property or anyone else's property.

The Court: That is what I want to know.

The Witness: It is the flying of aircraft, the testing of aircraft.

The Court: What I want to find out is the necessity for the immediate possession of the property; and I am trying to determine whether there is any likelihood that there would be injury resulting if it isn't ordered now, or whether it should be ordered at a later time.

The Witness: That is a difficult question to answer, your Honor. I think we went into something like that before.

Naturally we do not want accidents to happen, but our mission, our job, is to test these new airplanes and find out what is wrong with them. In the course of testing, the accidents do occur, may occur at any time in flight, take-off [186] or landing. It may be over the property or somewhere else.

There is that danger of accidents happening at any time, on the property or anywhere else.

The Court: Let me say that I am now referring to Exhibit No. 4 and Enclosure No. 3. Here is the runway, in a northeasterly direction, from B to A.

The Witness: That is the runway being built.

The Court: Being built?

The Witness: That is not the runway in use at the present time.

The Court: Where is the one in use?



(Testimony of Marion J. Akers.)

The Witness: This one right here (indicating), your Honor, indicated by the dark line.

The Court: This one from B to A is the one being built for future use?

The Witness: That is correct, sir.

The Court: Has there been any work done on that runway yet?

The Witness: Yes, sir. The work on that runway is, I would say, approximately 20 to 25 per cent completed.

The Court: What is the distance between the yellow of Miss Barnes' property and the southeasterly place marked "B" of the runway which is being now worked on?

The Witness: I would judge it to be in the neighborhood of two or three miles, your Honor.

The Court: When do you expect to do work from "B" to Miss Barnes' property?

The Witness: Would you mind saying—

The Court: I will ask you what kind of work do you expect to do there?

The Witness: The only work with respect to construction will be the removal of obstructions to flight.

The Court: There will be no runway?

The Witness: That is correct. It is not planned to build a runway across there. In the two-mile clear zone, obstructions to flight will be removed so aircraft can land, if necessary, wheels up, doing a minimum amount of damage; in other words, so

(Testimony of Marion J. Akers.)

they don't run into a telephone pole, ditch or something like that.

The Court: You expect to have jet planes flying there?

The Witness: Yes, sir; not only jet planes, but other flights. [188]

\* \* \* \* \*

### Recross Examination

Q. (By Miss Barnes): You mentioned three aircraft accidents. When did these three aircraft accidents occur? I mean fatal crashes, not some little thing flying off an airplane; three fatal crashes.

A. I didn't refer to three fatal crashes.

Q. No, but I did. Have there been three fatal crashes in the last three or four weeks, from Muroc?

A. No, there have not been three fatal crashes in the last three or four weeks. There have been two fatal crashes. The one I refer to on Tuesday, in which approximately one and one-half tons of material came floating off of the aircraft, they did have trouble in flight. The pilot was able to get the plane back home safely, and did not lose his life. However, there was approximately a ton and a half of metal floating down.

Q. We heard you. That wasn't the question.

Tell me about the fatal accident that occurred just north of the Base, the military reservation, just north of the public highway from the military reservation just recently, where two North Amer-

(Testimony of Marion J. Akers.)

ican—two Molthrop pilots were rolling the airplane over the hangar.

A. I assume you are referring to an accident that happened, as I recall the date, the 20th of October, involving [190] an F-89,—

The Court: This October?

The Witness: This October, 1953, involving a jet aircraft, in which two persons were killed.

Q. (By Miss Barnes): Did that airplane crash on the Base?

A. It did not. It crashed off the reservation, and, for the information of the Court, parts of that aircraft landed in the front yard of a very isolated ranch.

Q. Approximately, from that map, where did that crash land?

A. It occurred in this general area here (indicating).

Q. All right. Now—

The Court: That is in the upper part of the paddle north of the heavy black line, as shown on Exhibit 3, Enclosure 2?

The Witness: Yes, sir.

Q. (By Miss Barnes): All right, Colonel Akers, where did Major Popson spin in with the experimental aircraft? About when did that accident—or where did he spin in, in what location?

A. I don't recall the exact date. I assume you are referring to an accident in which Major Popson, one of the test pilots, was killed in an experi-

(Testimony of Marion J. Akers.)

mental aircraft, and he was killed in an area east of the Base. [191]

Q. Is it not true he was killed off of the reservation?

A. It is not true he was killed off of the reservation. He was killed east, as I indicated.

Q. On the reservation?

A. On the reservation.

Q. There was a third accident where, I believe, the pilot bailed out, took off from the Air Base?

The Court: Just mark Popson there.

The Witness: The area would be very general, your Honor.

Q. (By Miss Barnes): Colonel Akers, was there another aircraft from the Air Base lost within the same short period of time?

A. Not to my knowledge.

Q. An aircraft crashed over near Victorville, and the pilot bailed out?

A. Is that a question?

Q. Yes, I am asking you.

A. I assume you are referring to the same article I read in the paper in which there was a pilot from the Georgia Base.

Q. Anyway, we will let that go.

You confine your test flights to the military reservation?

A. No, it is impossible to confine test flights to the boundary of the military reservation.

Q. Is it true, then, Colonel Akers, that as long as you [192] don't confine these test flights to the

(Testimony of Marion J. Akers.)

reservation, that anything that went wrong with them could go wrong with them at any place they may happen to be flying; is that correct?

A. It is a possibility, yes.

Q. In other words, if a huge chunk of metal were apt to fly off, it could have flown off anywhere, off or on the reservation, or many, many miles from there; is that correct?

A. Not entirely, no.

Q. Why not?

A. Normally the troubles that develop generally develop within a relatively short period of time after take-off or during a descent for landing, or during a certain portion of the test which might tax the engine or air frame parts, or something like that; and if that is the case, it is in the vicinity of the reservation.

Q. This airplane that you said lost this huge piece of metal, did it land safely back on its place of take-off?

A. It landed on the lake bed.

Q. It landed on the lake bed, and it was safe?

A. Yes.

Q. These all-altitude courses, as you all call them, why aren't they confined to the bases instead of going over the town of Rosamond?

A. I don't recall now testifying these were hazardous. This is an all-altitude speed course, flown back and forth [193] to check their speed.

Q. In other words, you don't consider that a hazardous endeavor?

A. Some parts may be, some parts not.

(Testimony of Marion J. Akers.)

Q. But safe enough to go over the town of Rosamond?

A. The flight path doesn't carry them over the town of Rosamond.

The Court: Where is the town of Rosamond?

The Witness: Inside this loop here (indicating). Shall I mark that?

The Court: No, there is no need to.

Miss Barnes: I think that is all.

Mr. Weymann: I have some cross examination.

The Court: Mr. Weymann, I would like to ask one question.

Looking at exhibit 3, Enclosure 2, I think you said about 18 miles from here to here (indicating), one loop to the other, is that correct?

The Witness: Yes, I estimated that would be in the neighborhood of 18 miles.

The Court: It is your statement that this—

Miss Barnes: Are you looking for the one that is going over the Wherry Housing, your Honor?

The Court: No, I am trying to get the distance in mind. [194]

\* \* \* \* \*

Examination \* \* \* \* \*

Q. (By Mr. Weymann): Colonel Akers, do you know if it is possible or feasible to take photographs of the classified configurations of new aircraft from the premises occupied by the defendant?

The Court: Read that question.

(The question was read.)

The Court: You may answer it.

(Testimony of Marion J. Akers.)

The Witness: Yes, it is possible to do so.

Q. (By Mr. Weymann): And that would constitute a security leak, would it not?

A. Well, the danger is not so much in the security leak. It depends on who takes the pictures, and what they do with them. We are testing, as I mentioned before, aircraft of the future, and it behooves the defense of the country to keep their configurations, in many cases, and performance, and so on, secret and away from anyone who might want to use them for adverse purposes.

Q. And would the operation of a commercial flying field within the area of the Base constitute any hazard to flying safety in view of the tests being carried on?      A. It would, definitely.

Mr. Weymann: That is all, Colonel.

Miss Barnes: I think I will have to ask the Colonel a question on that. [201]

#### Cross Examination

Q. (By Miss Barnes): If you could take photographs from the defendants' property, wouldn't it be even more convenient to drive over on the highway running just at the west boundary of the Base, which is a public highway, and take your pictures, Colonel?

A. That is possible. However, the law enforcement officials can control the people on the highway.

Q. What law enforcement officials?

A. I would assume the Sheriff, the County

(Testimony of Marion J. Akers.)

Highway Patrol, and other law enforcement officers who would have authority there.

Q. Would you be referring, for instance to the head of the Sheriff's Office at Mojave, who testified here?

A. I was not. I was not referring to anyone in particular.

Q. Regarding small aircraft flying around, isn't it true there are civilian aircraft that land on that Base?

A. That is true. They have a definite route to follow to land there. They are under the control of the control tower at the Air Base and directions are given to them by the air control tower, so they are under direct control.

Q. Have you ever heard, since the time you have been there or before you were there, that aircraft from the defendants' field have in any way jeopardized aircraft from [202] the Air Base?

A. It depends——

Miss Barnes: Say "yes" or "no", for once.

The Court: Let him answer as he desires. You can move to strike it out.

The Witness: It would depend on how your term "jeopardized" is defined.

The Court: "Jeopardized" has a well-known meaning.

Have you any further questions?

Q. (By Miss Barnes): Have the aircraft ever offered to coordinate traffic control with the defendants? A. I couldn't——



(Testimony of Marion J. Akers.)

Mr. Weymann: Objected to as being immaterial and irrelevant.

The Court: The objection is sustained.

Miss Barnes: That is all.

The Court: Colonel, there is one question I want to ask. Can you point out on this Enclosure No. 1, Exhibit 2, just about where those mud mines are that are being worked on?

The Witness: One qualification, your Honor: The mud mines are not being worked now. Operation of those mud mines has been stopped some time ago.

They are located in this general area in here (indicating). [203]

The Court: Well, I got the impression from the testimony this morning that they were now being worked, the mud mines were being worked. You say that they are not being worked?

The Witness: Mining operations have ceased as of some time ago. The work being done there now is the process of filling them back up again.

The Court: Is this mud used in rotary pumps for oil drilling?

The Witness: Yes, your Honor. [204]

\* \* \* \* \*

Miss Barnes: I want to call Chief Hemsley.

## ELLIS E. HEMSLEY

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows: [206]

The Clerk: State your full name.

The Witness: Ellis E. Hemsley, H-e-m-s-l-e-y.

The Clerk: Have that seat.

## Direct Examination

Q. (By Miss Barnes): What is your name, Sir? A. Ellis E. Hemsley.

Q. Your address?

A. Star Route, Box 20, Blythe, California.

Q. Your present profession?

A. I am an operator of a sportsmen's camp, fishing and hunting.

Q. How long have you been operating that camp? A. Since May 1, 1953.

Q. Before you operated that fishing camp, what was your profession?

A. I was Fire Chief at Edwards Air Force Base.

Q. How many years were you Fire Chief at Edwards Air Force Base?

A. From 16 August, 1944, to April 30, 1953.

Q. During the time that you were Fire Chief, did you attend all the aircraft crashes?

A. No.

Q. Why not?

A. Well, there were times when I was on annual leave [207] or business trips, where crashes could have occurred when I was not on the Base.

(Testimony of Ellis E. Hemsley.)

Q. If you were on the Base when they occurred, did you attend them? A. Yes, ma'am.

Q. I want to call your attention to this joint exhibit here—I believe it is defendants' No. 4—do you recognize what this map purports to show? In other words, does that look like the more or less outline of the Rogers Lake, to you?

The Court: Miss Barnes, that is such a small map I have to lean forward to see it.

Miss Barnes: I am sorry.

The Witness: Would you repeat the question, Miss Barnes?

Q. (By Miss Barnes): Would you recognize that, about what that map purports to show? Could that be, for instance, Rogers Dry Lake there (indicating), and this (indicating) Rosamond Dry Lake?

A. Yes, ma'am.

Q. Now, you will notice on this map there is a green legend down here, and that legend states: "Actual crash locations". A. Yes. [208]

Q. That means those little green dots. Now, Colonel Akers testified on the stand that these were the exact locations of nine crashes that occurred on Rogers Dry Lake. Do you agree that these marks indicate such crashes?

A. I do not.

Q. Why not? Why do you differ with that?

A. Well, I would have to ask a question, if it is permissible. Over what period of time are these crashes supposed to have occurred in this area?

Q. Colonel Akers testified from 1949 to 1952, I believe.

(Testimony of Ellis E. Hemsley.)

A. Then my answer to your last question is that there were not nine crashes in this area as shown on the exhibit, during that period of time.

Q. Were there any crashes that occurred in that area? A. Yes.

Q. Could you explain them?

The Court: Well, can you point them out?

Q. (By Miss Barnes): Could you point them out and explain what they were?

A. Well, there were three crashes that could possibly be indicated by these green marks shown, such as this one (indicating), a bit off location. I take it that this (indicating) is the present runway at Edwards Air Force Base?

Miss Barnes: I believe that is correct.

The Court: Now, which is the present runway?

The Witness: This black line?

Miss Barnes: Yes, that has been testified to, that is the present runway. Not the projected, new one, but the present.

The Witness: This (indicating) would be in close proximity to one crash.

The Court: The dot in the upper right-hand corner?

The Witness: That is correct.

Any of these three (indicating) would be in very close proximity to another, and this one (indicating) could indicate the third crash.

Q. (By Miss Barnes): Were any of those crashes fatal crashes? A. Yes.

Q. Which one? The name of the man flying, not the airplane?

(Testimony of Ellis E. Hemsley.)

A. The crash that occurred in this area (indicating), Naval Commander Wood, who lost his life in the crash.

Q. How did that crash occur? Was it on take-off or landing? Will you explain how that crash occurred?

A. No, it was not take-off or landing. The aircraft was in flight, as we call it, making a pass over the lakes. Exactly what happened to the aircraft to cause it to crash I can't say; but we were standing by with our crash trucks, along the west boundary of the runway. He was to pass in [210] front of us. When he got approximately two miles from us, he went on into the lake, crashed into the lake.

Q. Are you quite positive, Chief, that there were no more than three crashes, as you stated, and only one of them was fatal?

The Court: I think he has named five.

The Witness: No, your Honor, I am afraid you didn't understand me. I said any of these three could indicate a crash that occurred in this area (indicating).

The Court: Just one of them?

The Witness: One of them would, yes; and the three would be down here (indicating).

The Court: Now answer Miss Barnes' question.

(The pending question was read.)

The Witness: That is correct.

Q. (By Miss Barnes): Was one of those crashes a taxiing accident that you referred to?

(Testimony of Ellis E. Hemsley.)

A. Yes, the accident that occurred in this area (indicating) was simply a taxi run accident. The aircraft was not intended to be in flight.

Q. Chief Hemsley, Colonel Akers testified that an accident can happen anywhere. Do you agree with that?      A. Yes.

Q. I am going to ask you the names of certain pilots [211] who we knew, and I want you to tell about where they crashed.

I am going to mention Joe Wolfe. Did you see that accident?

A. Yes, I was looking at the aircraft at the time of the accident.

Q. That map is a little small to indicate. Will you please tell approximately where that aircraft crashed?

A. I am a bit confused. I don't know whether I can, Miss Barnes. If you could show me the area where the present Wherry Housing sets, I could give you a fairly definite location of where the aircraft crashed into the ground.

Q. Instead of bothering with locating it exactly on the map, how close—

A. I can tell you this, its impact to the ground was approximately one and one-half miles south-east of our Wherry houses.

Q. Where did Captain Bailey crash?

A. Captain Bailey crashed on the side of a desert butte approximately 25 air miles southeast of the reservation.

Q. Do you remember George Krebs?

(Testimony of Ellis E. Hemsley.)

A. I don't believe I place George Krebbs, with an accident, that is.

Q. He was killed in an accident from the Air Base, but it was a considerable distance. I wonder if you can remember that. [212]

A. I don't recall the accident.

Q. Pete Sellers?

A. Captain Sellers' accident occurred approximately 35 miles southeast on Mirage Lake.

Q. Edwards Air Force Base was named after Glenn Edwards, and his life was lost in a test flight. Can you tell approximately where he crashed?

A. Yes. That crash was 7 miles north and 8 miles west by highway from the main base at Edwards. I may pinpoint that a little more specifically. That was just north of Highway 466.

Q. Where was it in relation to the town of Mojave?

A. I would say it was approximately 15 miles east of Mojave.

Q. And off the reservation?

A. Off the reservation.

Q. Do you know approximately—Bob Hoover bailed out of his ship and let it go, I think. Do you know that Bob Hoover did bail out of his ship?

A. Yes. I heard of the incident later, but I believe I was away at the time and the crash was not fatal. I did not pay too much attention to the reports that were made by my assistant chiefs.

(Testimony of Ellis E. Hemsley.)

Q. Did the aircraft land on or near the reservation?

A. As I recall, it was a considerable distance from the [213] reservation.

Q. Neil Lathrop lost his life in a crash. Did you see that, Chief?

A. I was looking at that aircraft.

Q. Will you explain how that accident happened, Chief, and where he crashed?

A. Well, to explain how it happened, I can tell you what I saw. Major Lathrop had made several passes over the main base runway. We were watching him quite closely, and, on this final pass, he evidently attempted what we call a slow roll, lost control of the aircraft, and went into the ground approximately one-eighth of a mile west of our main runway on the main base.

Q. Was he practicing for an airshow, or was that test work?

A. I can't answer that.

The Court: Don't take the time with that.

Miss Barnes: Okay.

Q. Earlier in the case I testified as to several years at Muroc, and I mentioned incendiary fires there. How many incendiary fires, Chief, did you have on that base, approximately?

A. I would only be able to give an approximate estimate but I would place it between 12 and 15.

Q. Incendiary fires. Was the Officers' Club one of [214] these fires?

A. That is correct.



(Testimony of Ellis E. Hemsley.)

Q. Did you report it as an incendiary fire?

A. Well, I endeavored to.

Q. What do you mean when you say you endeavored to?

The Court: Well, I don't think we will take the time to go into that. That would call for the conclusion of the witness.

Miss Barnes: Your Honor, what I am trying to prove in this case, as you know, is bad faith; and I made an allegation the entire change of the base and the runway, which is a very expensive and absurd thing to do, was done by Colonel Gilkey because I interfered in trying to catch the pyromaniac, and I want to show you and make the proof that Colonel Gilkey was doing everything under the sun to keep these fires from being known as incendiaries, and keep me from endeavoring in any way pursuing or capturing this——

The Court: If you can do it in a very short time, you may.

What were you going to say?

Mr. Weymann: I object to the question, because I don't know what that has to do with the exercise of discretion by the Secretary of the Air Force.

The Court: Miss Barnes may have a few minutes.

Miss Barnes: I will get right to the point. [215]

Q. Were you requested to change your report, Chief Hemsley?           A. That is correct.

Q. Who requested you to change your report?

A. Lieutenant Colonel Rau.

(Testimony of Ellis E. Hemsley.)

Q. Who was he?

A. He was the Executive Officer to the Base Commander.

Q. Who was the Base Commander?

A. Colonel S. A. Gilkey.

The Court: The Court doesn't see the application of this to the matter before the Court. Proceed with some other matter.

Mr. Weymann: I haven't made any objection to this line of testimony because I didn't want to take the time.

The Court: Let me see those two maps.

(Documents handed to the Court.)

The Court: Did you know a gentleman by the name of Popson?

The Witness: No, I did not know him.

The Court: You did not know him?

The Witness: No sir; that happened since I was at the base.

Miss Barnes: I would like to ask him one other question.

Q. When an aircraft takes off of the air base at Muroc, is it customary to take off into the wind?

A. Yes, ma'am.

Mr. Weymann: Just a moment, please. I don't believe this witness is qualified to answer technical questions. He testified as a fire chief, not an aeronautical expert.

The Court: Well, Mr. Weymann, I don't know whether that would require an expert or not. I should think not. A man who is there all the time

(Testimony of Ellis E. Hemsley.)

and sees them,—whether it is a requirement might be a different thing.

Do they take off into the wind?

The Witness: Yes, sir.

Q. (By Miss Barnes): And what is the direction of the prevailing wind?

A. The direction of the prevailing wind at Edwards Air Force Base?

Q. Yes, sir.

A. Approximately 90 per cent is from the northwest.

Q. Regarding the runway that is up close to the north base, that I was indicating to Colonel Akers, do you know that runway? Do you know of a runway up at the north end of the base?

A. The north base?

Q. Yes.           A. Yes.

Q. What direction do they take off there?

I will frame that differently; I will state exactly what [217] I want to know.

Do they take off from that base there, and is the flight path directly over the Wherry Housing?

A. That is correct.

Miss Barnes: That is all.

The Court: Any cross examination? [218]

\* \* \* \* \*

(Witness excused.)

The Court: Call your next witness.

Miss Barnes: Your Honor, we have quite a few witnesses that I would like to have testify. I

know how busy the Court is, and I know you have got things piled up ahead.

I spoke to Mr. Weymann this morning when I first came in, and asked him if he would stipulate, if it would be agreeable to your Honor, if I could take depositions, and have the transcripts made up to be sent to you on this case for your consideration. That way I can eliminate witnesses here that will hold us up in time.

The Court: Well, we have this case set for trial and you have had to take two days out of the time the Court allotted. I would like to finish with the testimony either today or tomorrow.

Miss Barnes: Then in that case, your Honor, would it be agreeable to you if I took depositions of some of these witnesses with the presence and consent of Mr. Weymann? He so stipulated I could do so this morning. If you want that, then we [221] could put the depositions in the case, and you would have a chance to review them at your leisure.

The Court: How many witnesses do you have?

Miss Barnes: Approximately 16, your Honor.

The Court: Are they all in the court room?

Miss Barnes: Most of them, yes. They have been here, some of them, since the opening day, and some have gone to Los Angeles and returned.

I would like to bring out the most important ones now, more or less out of order possibly, but I thought rather than——

The Court: Well, if you take depositions,——

Miss Barnes: I don't want to lose the chance to

have them testify, your Honor, on account of I am trying to prove bad faith, which I believe I am going to do, and I wouldn't want any little jigsaw piece of testimony that belonged in there and fit into the picture to be neglected. [222]

\* \* \* \* \*

Mr. Weymann: I have no further witnesses, your Honor.

The Court: What did Miss Barnes say?

(The record was read.)

The Court: And conclude the matter now?

Miss Barnes: If I could still take the depositions on some of the others.

The Court: Well, I wouldn't want to take up the time——

Miss Barnes: I have witnesses that have been waiting several days. I would like to have you hear one especially. I have one that will only take three minutes on the stand, and the other will take a little longer.

The Court: Mr. Weymann, if you have no objection, the Court will hear those witnesses' testimony, and you will take the depositions of the others.

Mr. Weymann: Those two witnesses?

The Court: Yes.

Miss Barnes: Mr. Stubbs. [224]

## LUCIEN Q. STUBBS

a witness called on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Lucien Q. Stubbs.

The Clerk: Have a seat, Mr. Stubbs.

## Direct Examination

Q. (By Miss Barnes): Your name, Mr. Stubbs?

A. Lucien Q. Stubbs.

The Court: How do you spell the first name?

The Witness: L-u-c-i-e-n Q.

Q. (By Miss Barnes): Your profession?

A. I work for the Government.

Q. Are you connected with the Muroc School District?

A. I am Clerk of the School Board.

Mr. Weymann: I can't hear what the witness is saying.

The Court: Mrs. Buck, read the question and answer.

(The record was read.)

Q. (By Miss Barnes): You say you are Clerk of the School Board. Are you a voting member of that Board? A. Yes.

Q. And that is an elective office, is it not? Are [225] *elected* to that Board?

A. Ordinarily it is, but I was appointed because of the death of someone else, Mr. Grimm.

Q. How long have you held that position?

A. Three years, I think.

(Testimony of Lucien Q. Stubbs.)

Q. Do you know the defendants in this case?

A. Very well.

Q. How long have you known the defendants?

A. Approximately 18 years.

Q. How many children go to the school in the Housing area of the Air Base?

Mr. Weymann: Objected to. Immaterial, irrelevant to any of the issues.

The Court: Objection overruled. You may answer.

The Witness: I have some figures; I have the numbers here.

The Court: Don't you know approximately?

The Witness: May I present it to you (indicating a document)?

Miss Barnes: Let him check his figures.

The Witness: Okay. There is 695 elementary; and there is 231—I don't have my glasses—in the high school.

Q. (By Miss Barnes): How many of these children live in the Edwards Air Force reservation, other than the Wherry Housing Project?

A. I would again like to present this to her. I don't have my glasses.

Miss Barnes: He can't read it without his glasses.

The Witness: 71 Edwards, 72 Boron, 88 Mojave.

Q. (By Miss Barnes): Do I understand that there are children brought down from the town of Mojave, going to school at the Wherry Housing?

A. There is, yes.

(Testimony of Lucien Q. Stubbs.)

Q. You stated the figures. And those children are brought every day from Mojave in the school bus; is that correct?

A. State buses, yes.

Q. And children come from Boron, too?

A. Yes.

Q. Are they brought in State buses?

A. Yes.

Q. Is it true they are going to try to build a new high school in Mojave?

Mr. Weymann: Your Honor, the question calls for the conclusion of the witness.

The Court: Objection sustained.

Q. (By Miss Barnes): How long do you think this condition will go on, these children being brought—— [227]

Mr. Weymann: Calling for a conclusion of the witness.

The Witness: I can't answer that.

The Court: Sustained.

Q. (By Miss Barnes): How near is the school to the present main runway of the air base?

A. Any answer I gave would have to be approximate.

The Court: Approximately how close?

The Witness: I would say three and a half miles.

Q. (By Miss Barnes): Would you say, Mr. Stubbs, that there are more children actually coming to school in the high school at that Housing



(Testimony of Lucien Q. Stubbs.)

than there are that live there at the Wherry Housing or at the air base?

Mr. Weymann: Objected to. Incompetent and irrelevant.

The Witness: I couldn't answer.

The Court: Objection sustained.

Miss Barnes: Okay.

Q. Who operates these schools?

A. The State.

Q. Does the State own land in that area?

Mr. Weymann: Objected to as irrelevant and immaterial.

The Court: Objection sustained.

Miss Barnes: Your witness, Mr. Weymann.

Mr. Weymann: No questions. I move to strike the [228] testimony of this witness as having no bearing whatsoever on the good faith of the action of the Secretary and Assistant Secretary of the Air Force in determining the necessity for the acquisition of the subject property.

The Court: Well, upon that basis, the motion is granted.

Miss Barnes: Your Honor, we have also the motion for immediate possession, and the witnesses have been interwoven back and forth, and Mr. Weymann has claimed that the defendants' property and life is in jeopardy; and I think we are showing that they are bringing school children right into the area and that airplanes have actually crashed closer to them than to the defendants' property.

(Testimony of Lucien Q. Stubbs.)

The Court: That is a part of the immediate possession.

Miss Barnes: But that is charged——

The Court: It may remain in for that limited purpose.

Have you any cross examination?

Mr. Weymann: No cross examination.

(Witness excused.)

Miss Barnes: Mr. Hook.

### HOWARD ARTHUR HOOK

a witness called on behalf of the defendants herein, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Howard Arthur Hook. [229]

#### Direct Examination

Q. (By Miss Barnes): What is your name?

A. Howard Arthur Hook.

Q. What is your address?

A. 471 Sycamore Road, Santa Monica Canyon, Santa Monica, California.

Q. What is your profession?

A. I am employed by the Civil Aeronautics Administration as Chief of the Air Force Subdivision, for the Western region.

Q. And what does the western region consist of?

A. The eleven most westerly states.

Q. You are in charge of eleven most westerly states for the air force, is that right?

(Testimony of Howard Arthur Hook.)

A. That is right.

Q. Mr. Hook, how long have you been in the C.A.A.? That is the Civil Aeronautics Administration?

A. Since 1928.

Q. Since 1928?

A. That is right.

Q. Have you always been in charge of air ports, or have you held other capacities?

A. No, I have held other jobs in the C.A.A., some higher and some lower than my present job.

Q. Were you ever at the head of the regional—what is [230] that title?

A. Yes, I was regional administrator for what used to be region six of the C.A.A., which comprised California, Arizona, Nevada and Utah.

Q. During that time, have you been a member of any governmental committees or committee, or special boards?

A. Yes, a number.

Q. Were you a member of the governmental committee known as the Interdepartmental State Traffic Control Board?

A. I was a member of a governmental committee or subcommittee of a governmental committee of the Interdepartmental Air Traffic Control Board.

Q. Will you tell us, in your own words, the functions and duties and authorities of that Board?

A. The Board was created by Executive Order of the President to examine into and endeavor to work out problems of use of air space, not only as to aircraft but as to other things which might affect the operations of aircraft, such as gunnery.

(Testimony of Howard Arthur Hook.)

The various services, the military, the Navy, Air Force, the problem there, which is aircraft problems, would come before the Board for determination.

Q. What was your position on that Board, sir?

A. I was the Chairman of that Board, for about four years.

Q. What position in C.A.A. did you occupy at the time? [231]

A. Regional Administrator for the four southwest States.

Q. What was the status of civil aviation in California in 1944 and 1945?

A. Immediately after Pearl Harbor a defense zone 150 miles wide was created along the west coast. In 1944 and 1945, that defense zone still existed.

In the beginning, or shortly after Pearl Harbor, scheduled air lines were permitted to fly on flight plans carefully monitored by C.A.A. facilities, but personal flying and all forms of aviation other than—forms of civil aviation other than the scheduled carriers were brought to a stand still until it was, just little by little, permitted to start up again.

Q. Were some civil airports in the defense zone allowed to function for other than scheduled air lines?

Mr. Weymann: I will have to object to that question.

The Court: The Court will sustain the objection.

Q. (By Miss Barnes): Mr. Hook, during these

(Testimony of Howard Arthur Hook.)

various operations, as they began to open up, were aircraft allowed corridors, in other words, designated spots for flying?      A. Yes,—

Mr. Weymann: Same objection, if the Court please.

The Court: Same ruling. You don't need to answer. [232]

Q. (By Miss Barnes): Are you familiar with the Barnes Airport near Muroc?

A. In a general way. I have never been on the field, but my personnel have inspected it a number of times.

Q. Do you have a map of that field?

A. I have a sketch, what we call a facility record sketch, which is made out for each airport in our region and is kept up to date by recurring inspections.

The sketch also, on the reverse side, lists essential information concerning the airport.

(Document exhibited to counsel for plaintiff.)

Miss Barnes: I would like to have that marked for identification, your Honor.

The Court: Are you going to ask him any questions about it now?

Miss Barnes: Yes.

The Court: Well, if you are, you may proceed without having it marked.

Miss Barnes: I am trying to shorten this testimony up. There is something more important here.

The Court: Just let it be marked for identifica-

(Testimony of Howard Arthur Hook.)

tion as Pancho Barnes' Exhibit No. 8. It may be so marked for identification.

The Clerk: Exhibit 8. [233]

(The document referred to was marked as Pancho Barnes' Exhibit 8 for identification.)

Q. (By Miss Barnes): Do you remember any matter pertaining to this airport coming before the I. A. T. C. B. while you were Chairman?

A. Yes, I remember you applying to the I. A. T. C. B. for permission to operate the airport again, or for civil aircraft to operate at and into your airport, even though it was in the 150-mile defense zone.

The Court: Miss Barnes, most of the time you get right to the point, but this time you are delaying.

Miss Barnes: Well, this ties in with some of the earlier testimony, in the story I was telling at the first part of the case the other day when we were in court.

The Court: Just ask the pertinent questions.

Q. (By Miss Barnes): Did I have to take action before the Board, and make a special request, and call a special meeting to force the opening of my airport?

A. There were two meetings of the subcommittee which discussed your airport. The first one was August 22, 1944; and the subcommittee voted to reopen your airport, subject to coordination of traffic patterns between you and the Commanding Offi-

(Testimony of Howard Arthur Hook.)

cer of the Muroc Air Base, so that there [234] would be no confliction.

At that time the subcommittee did not have the authority—it did not have final authority. It made its recommendations to the parent board in Washington. Its recommendations were forwarded and were approved by the parent board September 8, 1944. However, the Administrator of the C.A.A. did not designate the airport after the Board in Washington had voted to do so, and—I am not sure—my recollection is that there was some objection made in Air Force quarters, but I have found no correspondence.

The Court: Well, was the airport reopened finally?

The Witness: Yes, sir.

The Court: And was it done at Miss Barnes' request?

The Witness: It was.

The Court: Do you want to ask him any further questions?

Q. (By Miss Barnes): How much later was that? About what date was that reopened?

A. Immediately after October 2, 1945.

Q. Had other civilian airports opened before that?

The Court: I don't care about going into a comparison.

Miss Barnes: Discrimination, your Honor.

Q. Mr. Hook, you have testified that you handled these airports for eleven states. After the New-

(Testimony of Howard Arthur Hook.)

ark, New Jersey incident, there was a special committee that set the standards [235] for all airports, I believe, as a result of that accident.

Could you testify what those standards are?

Mr. Weymann: Objected to, incompetent and irrelevant.

The Court: Objection sustained.

Miss Barnes: I would like to make an offer of proof, your Honor.

The Court: You may make your offer of proof on that point. The Court, in the Court's opinion, has admitted the only point which would seem to be material, that is, that the airport was closed and was reopened, and reopened upon your request.

Miss Barnes: The offer of proof I wish to make is this: that the Air Force is now saying that I am in a dangerous position even from the new runway which isn't built yet, and are trying to remove me from my premises in thirty days, from an airport the Colonel said wouldn't be finished until December, 1954, I believe.

Now, the defendants' property and airport is well over three miles past the end of that runway, even if it were completed by that date in 1954; and these rules that we set out show a very definite space—at the end of the runway a half-mile clear way, and two miles over sparsely populated ground, and then after that they have no designation.

The defendants' property is far beyond even any recommendation made by the Board. [236]

The Court: That is a matter of argument you



(Testimony of Howard Arthur Hook.)

are making now, but you have made your offer of proof.

Q. (By Miss Barnes): How many airports are there in Los Angeles County?

Mr. Weymann: Objected to as being incompetent and irrelevant.

The Court: That would seem to be a preliminary question.

Mr. Weymann: All right.

The Witness: Would you please repeat the question?

(The question was read.)

The Witness: At present there are 16 civil airports in Los Angeles County.

Q. (By Miss Barnes): How many were there in 1940, approximately?

A. I don't have the figures for 1940, but in 1930 there were 59 in Los Angeles County, and in 1946 there were 42.

Q. Does the Civil Aeronautics Commission think that—when I say “Greater Los Angeles”, would you consider, Mr. Hook that the Antelope County in general is considered a part of the Los Angeles area from the airport standpoint?

A. Yes. Depending on the size of the community, naturally, the service area of the community, I would consider that would extend out of Los Angeles, oh, 80 or 90 miles.

Q. Do you consider that the loss of civil airports in the Los Angeles area is harmful to the development of civil [237] aviation.

(Testimony of Howard Arthur Hook.)

Mr. Weymann: Objected to, immaterial, calling for the conclusion of the witness, and no bearing whatsoever.

The Court: I believe he is in a position to answer that question.

Mr. Weymann: It has no bearing on the issues here.

The Court: It is sustained on that ground.

The Witness: The Civil Aeronautics Administration——

Mr. Weymann: Just a moment.

The Witness: Excuse me.

Miss Barnes: I would like to make an offer of proof on that to your Honor.

Civil aviation has been losing its airports, as Mr. Hook has just testified, at an alarming rate. I asked him if he considered it was harmful to them. What I am trying to prove is that the Air Force is trying to put another airport out of existence.

I will ask him a different question.

Q. Mr. Hook, do you consider that it is an alarming thing that so many—I will ask you first does the losing of airports crowd the other civilian airports to more than capacity standards?

A. The Civil Aeronautics Administration is extremely concerned over what is happening, particularly in the vicinity of the large metropolitan areas. We are currently [238] working in Los Angeles County, for example, endeavoring to get them to establish a county-wide system of public airports to replace other airports fast going out of existence,

(Testimony of Howard Arthur Hook.)

due to economic pressure of real estate and so on.

Q. Do you know whether Palmdale has been shut down to private pilots?

Mr. Weymann: That is objected to.

The Court: The objection is sustained.

Miss Barnes: I want to make an offer of proof, your Honor. I can show by the closing down of Palmdale to private pilots, they have nowhere left to go except the defendants' field, and therefore causing great hazard to life, when a little airplane can't get into Los Angeles because of bad weather, and they have nowhere to go, if our field is shut down. To give them a chance—it is really a question that affects life. It may be a great many private pilots, because they have no place to go, will try to get in when they shouldn't.

Mr. Weymann: I may say, your Honor, that in the event of any emergency landing, I have never known of any airfield, even a military airfield, that would deny permission to land in the case of emergency.

The Court: Have you any further questions?

Q. (By Miss Barnes): Is it true that C.A.A. for some years has fostered [239] a national system of airports, not only for common carriers, but also other segments of aeronautics, such as personal flying and flight training?

Mr. Weymann: I object to that, incompetent and irrelevant.

The Court: Objection sustained.

Q. (By Miss Barnes): Why has the C.A.A.

(Testimony of Howard Arthur Hook.)

financially assisted in the development of airports?

Mr. Weymann: Same objection.

The Court: Same ruling.

Q. (By Miss Barnes): Do you consider that Barnes Airport is an asset to civil aviation?

Mr. Weymann: Same objection.

The Court: Well, the objection is overruled. You may answer.

The Witness: As I mentioned before, the Civil Aeronautics Administration is quite concerned with the lack of small airports, or airports for small aircraft operation. When one goes out of existence we do our best to work with communities, counties, etc., to establish one before the other one goes out.

I would say that any airport which is used appreciably in this heavy air traffic area, which is the Los Angeles complex, [240] I would like to see something else built before others go out. To that end I would say that if the military require the land where that airport is, I hope another can first be established somewhere in the general vicinity.

\* \* \* \* \* [241]

Mr. Weymann: I will stipulate that these are pictures of the defendants' property, but I will not stipulate that they may be received at this time, because that goes entirely to the question of value, and this is neither the time nor place to determine that.

Miss Barnes: We have value to consider in the bad faith of the appraisal on the declaration of taking.

Mr. Weymann: The pictures won't help on that.

Miss Barnes: They will give the idea.

The Court: I am of the opinion that those pictures would be not admissible on that point. That would be at the time of the trial.

Miss Barnes: Well, can I put them in for identification, and they are still part of the case?

The Court: You may mark them for identification.

Just take the pictures and mark them as Pancho Barnes' Exhibit No. 9, I think it is.

The Clerk: 9 will be the next number.

The Court: Mark all the pictures the one exhibit number. Just give them to the Clerk.

(A group of pictures was marked as Pancho Barnes' Exhibit No. 9, for identification.)

The Court: The Clerk has marked that entire group as Pancho Barnes' Exhibit No. 9 for identification. [243]

\* \* \* \* \*

### HAROLD ALLERSMEYER

a witness called on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Harold Allersmeyer.

The Clerk: Spell your last name.

The Witness: A-l-l-e-r-s-m-e-y-e-r.

### Direct Examination

Q. (By Miss Barnes): What is your address, sir?

The Court: What is your last name?

(Testimony of Harold Allersmeyer.)

The Witness: Allersmeyer.

Q. (By Miss Barnes): What is your address?

A. Box 217, Mojave.

Q. What is your profession?

A. Sanitarian.

Q. For whom?

A. Kern County Health Department.

Q. How long have you been in that position?

A. Six years.

Q. What are your duties?

A. Inspection duties, and all the duties relating to sanitation under the laws of Kern County.

Q. Do you know the defendants in this case?

A. I do.

Q. For how long have you known them?

A. Approximately five and a half or six years.

Q. Does the County of Kern issue licenses to operate hog ranches?      A. They do.

Q. Do you inspect the defendants' hog ranch from time to time?      A. I do.

Q. Would you recognize this as the license issued by Kern County for the defendants' hog ranch?      A. It is.

Miss Barnes: I would like to offer that for identification and have it marked.

The Court: Let it be marked—

Mr. Weymann: We will stipulate the defendant has a license to operate a hog ranch.

The Court: —as Pancho Barnes' Exhibit No. 11 for identification.

(The document referred to was marked

(Testimony of Harold Allersmeyer.)

Pancho Barnes' Exhibit No. 11 for identification.) [252]

Q. (By Miss Barnes): Do you know of another hog ranch on the same road between the defendants' ranch and Rosamond?           A. I do.

Q. Does it have a license?

A. No, ma'am.

Q. Why not?

A. Because it is on military property.

Q. Do you know about how many hogs there are there?

A. I have no idea, Miss Barnes.

Q. Is it a large number of hogs, or a small number of hogs?

A. There are numerous hogs.

Q. Several hundred?

A. Less than several hundred, probably. I would say 150 or so, perhaps. I have not seen all of them.

Q. Why don't you have jurisdiction over that?

A. Because it is on a military establishment, and I have no jurisdiction.

Q. Isn't it located on the same road the defendant's property is?           A. It is.

Q. Does the Air Force lease the property to this man? Do you know?

A. Apparently. It is listed—it is labelled as [253] Air Force property.

Miss Barnes: That is all.

The Court: You may stand aside.

(Witness excused.)

Mr. Weymann: I move to strike the testimony of the witness as incompetent and irrelevant and having no bearing on any of the issues on trial before the Court.

Miss Barnes: This is a very pertinent thing; and I want to make an offer of proof, that if it is dangerous for us to have a hog ranch and our other businesses on the ranch we do have, but a short distance down the road, how can the Air Force turn around and rent a hog ranch to another man and let him operate there, and say it is dangerous for us?

The Court: The Court will consider the motion.

Miss Barnes: Now, on the witnesses, you wanted me to point out the other witnesses.

Mr. Hank Coffin—if you would stand up, Mr. Coffin—I want to take his deposition. Do you want me to tell what I can prove?

The Court: No. You understand this testimony is to be confined to the question of bad faith.

Mr. Weymann: That is right.

Miss Barnes: That would be a bad faith question.

The Court: And no other questions will be submitted to [254] the witness.

Miss Barnes: And Mr. Don Dwiggin, of the Los Angeles Daily News.

Constable George Hodges of Mojave.

Mr. Koch, J. F. Koch, who has a ranch close to us at Muroc, in fact, closer to the base than we are.

Mr. Eddie Hatcher, Detective Sergeant of the Arson Department of Los Angeles County.

Mr. Gibby Brush, of the Los Angeles Daily News.



Miss Marry Ellen Masters, and her mother, Mrs. Martha Masters.

And Lieutenant Colonel A. F. A. Kluever, who is not in the court room.

The Court: These are the witnesses whose depositions you wish to take, and there will be a limitation upon the questions to be asked, that they will refer entirely to the question of bad faith.

Miss Barnes: Yes, your Honor.

The Court: And no other questions will be asked.

And will you and Mr. Weymann agree upon the time for the taking of the depositions?

Mr. Weymann: Yes. Of course, I would like to have that as quickly as possible, as the circumstances of our office will permit.

The Court: Yes, I understand.

Miss Barnes, is that understood? [255]

Miss Barnes: Yes, your Honor, it is.

May I address the Court with a short closing speech, which I would like to have made if we finished the case?

Mr. Weymann: I would have to reply to that, and I think until the matter stands submitted——

Miss Barnes: I would like to make a speech——

The Court: Do you want to argue the case after the witnesses have testified,——

Miss Barnes: Yes.

The Court: ——or would you like to submit it without argument.

Miss Barnes: I would like to argue it, and I would like to make a speech out of order right now.

I will do it very quickly.

The Court: No, I am afraid it——

Miss Barnes: I will do it real quick.

The Court: I don't want you to make a speech until you conclude.

Miss Barnes: Can I include a copy and mark it for identification, so you can see it?

The Court: No, I won't look at it until after you have finished.

Miss Barnes: I want it in the record. [256]

\* \* \* \* \*

Tuesday, February 23, 1954. 10:00 a.m.

\* \* \* \* \* [259]

Mr. Weymann: These supplemental affidavits—there has been no answer filed under Rule 71 (a), which requires that the only pleadings filed by the defendant should be an answer. There has been no answer filed in this proceeding.

It is true I told the defendant that her time to answer would be extended, at the time service was made. No answer [283] has been filed.

The Court: Did you tell Mrs. Barnes she did not have to file an answer within twenty days?

Mr. Weymann: I did.

The Court: When does that time expire?

Mr. Weymann: Oh, until notice to answer.

The Court: Then you still have to give her notice to answer?

Mr. Weymann: I suppose I do. These proceedings have been going on, she filed the petition for partial withdrawal, and then filed these various motions. I think on the face of it, the supplemental

amendment to motion to set aside declaration of taking and to vacate and set aside *ex parte* judgment proves my very contention of bad faith on the part of the defendants.

One point I want to emphasize. Mrs. Barnes spoke of three appraisers coming there and using the same tape measure and taking the same pictures. Your Honor well knows that is a common practice of appraisers.

The Court: I don't believe that is proper to argue at this time.

Mr. Weymann: Very well.

The Court: That is for examination at the time of trial.

Mr. Weymann: That is correct. But I again urge my motion that the only issue before the Court is that of just [284] compensation. We have been held up now for six months in obtaining possession of this property, and the question of whether it is necessary to acquire this property is not a judicial question, and certainly not a question for this defendant to determine.

The Court: You say it has been held up six months, and now it occurs for the first time, as far as I know, in the testimony or by an admission of one of the attorneys that you had extended Mrs. Barnes time to answer.

Mr. Weymann: That is correct.

The Court: That time has not yet expired?

Mr. Weymann: That is right. But we moved for an order of possession August 27th.

Miss Barnes: September 9th.

Mr. Weymann: That was when the motion came up.

The Court: The Court will take a recess and I will look over the proposals.

(A short recess was taken.)

The Court: It seems to the Court when this matter was before the Court previously that there was an express stipulation, or at least an expressed statement by the Court that this matter would be heard at a later time for the purpose of supplying affidavits of certain named persons, and nothing else would be presented. Was that not agreed upon, Mrs. Barnes? [285]

Mrs. Barnes: Your Honor, it was agreed, and stipulated by Mr. Weymann and myself in front of yourself, that I might take depositions and they would be incorporated.

The Court: And wasn't there the statement the Court would not consider anything but the new depositions to be presented? Do you recall that?

Mrs. Barnes: No, it was simply there was not time in court to proceed with the witnesses on hand, and it was stipulated that I might take the depositions.

The Court: The reporter we had then has died. What is your recollection?

Mr. Weymann: That is correct, the defendant took the testimony of six witnesses, and I believe the depositions of nine other witnesses were taken in Los Angeles, and they were filed in this proceeding.

The Court: Wasn't the statement made by the

Court that nothing more would be presented, except the hearing of those depositions?

Mr. Weymann: I don't recall.

The Court: I don't either, but I think that was it. I thought this matter was continued for that purpose only, but I am not sure.

Mr. Weymann: I have no recollection.

The Court: We cannot rely upon the reporter, because the reporter is not here. The Court has not had time to [286] consider these offered amendments.

Mr. Weymann: I have just had an opportunity to read them this morning.

The Court: I have not had time to consider your motion.

Mr. Weymann: And I also have a motion to make with respect to the depositions.

The Court: I was going to suggest that the depositions may now be presented, and the Court will take these motions under advisement, the motions made by Mr. Weymann and Mrs. Barnes.

Mrs. Barnes: I believe the clerk of the court has all the depositions and the exhibits with them in the file of the court. They were all mailed in by the court reporter.

The Court: Do you have them, Mr. Eiland?

The Clerk: Yes, I do have the depositions here.

Mr. Weymann: I would like to make a motion. I move that these depositions be suppressed on the ground there is nothing contained in any of them which directly or indirectly contains any testimony as to any act of the proper authorized officer of the

Air Force, the Secretary or Assistant Secretary, which impugns his good faith or indicates any act which is arbitrary or capricious, and in that connection I would like to put the defendant upon inquiry and ask her to state to the Court whether or not there is anything in any of those depositions which contains any testimony as to [287] any act of the Secretary of the Air Force, or the Assistant Secretary.

The Court: Well, the Court will now ask Mrs. Barnes in regard to that. You may answer that.

Mrs. Barnes: Yes, indeed I will, your Honor. As to anything the Secretary or the Assistant Secretary of the Air Force did, their particular and personal actions, within those depositions, it is true that we do not refer to them in any of the testimony which is given by them. They were not present and their actions were not questioned.

However, I asked Mr. Weymann who the Assistant Secretary of the Air Force was now and he said "I don't know," and those people, the Secretary and the Assistant Secretary, they change; even during this case there is a new Secretary of the Air Force.

The situation exists, your Honor, when an agent or subordinate acts, the Secretary or Assistant Secretary are liable for any and all of the actions that take place, from his office and under his office, and while we cannot expect to say they did this or did that, the acts of their agents are the only way which we have to determine their actions. A Secretary sitting in Washington, or Assistant Secretary,

or any big government official, is very, very busy. I doubt they read a little piece of paper about a condemnation suit. I doubt very much if the Assistant Secretary that signed [288] that, Mr. Huggins, ever read that. It is a routine thing; they rely on agents. While we don't say a Secretary did a certain thing, we say he did it because he is relying naturally on the data given by his subordinates. Consequently the case is in bad faith from the start to the end, and we will show that in the depositions, that because of bad faith they removed the air base, just for the purpose of running a runway in our direction. It is in those depositions, and we have one of the colonels who drew the master plan. [289]

\* \* \* \* \*

In this testimony, it might interest your Honor, in those depositions that we made, you remember the Court here, your Honor asked the question of Colonel Akers while he was on the stand, asked if those mud mines were operating at the other end of the runway, as we have shown on the map. You asked if those mines were operating and Colonel Akers told you they were not. He went on to say the only activity was the back fill.

There is testimony of five witnesses who described the [290] operation of the mines. Furthermore, we have brought in the bid of the U. S. Engineers, which is a bid calling for refilling, and the bid to refill is not now let, and one of the items in the bid is that Mud Mine No. 1 will go on operating until September 1954; the operation of the mud mines buildings are not to be moved until January 1955;

and the filling in and completion of work on the mud mines will not occur until June 1955.

Now, those things we have to know, your Honor. And in the record these officers, particularly Colonel Akers has really violated the sanctity of his oath, telling you things definitely not the fact.

Mr. Weymann: I object, your Honor.

The Court: You may reply.

Mrs. Barnes: Also they brought these maps into court. There has been a great deal of discussion of the maps, your Honor. I have shown they are not the same maps they produced. That is a disputed point, your Honor, but why couldn't they bring in the same maps?

The Court: You are arguing the entire case.

Mrs. Barnes: As far as these depositions that we took, which were stipulated to, your Honor, I need those depositions in court, because some of our most interesting facts came out in them. They are in those depositions, your Honor. [291]

\* \* \* \* \*

The Court: I think the Court will deny the government's motion to suppress the affidavits, and you [294] may proceed in the manner indicated heretofore.

Mr. Weymann: Very well.

The Court: You may present the affidavits now.

Mr. Weymann: The depositions?

The Court: Oh, yes, the depositions; I misspoke myself.

Mr. Weymann: I understand your Honor desires them read into the record?



The Court: Yes, they should be read into the record.

Mrs. Barnes: The whole thing? They are all printed nicely. They are by a court reporter, you know, and are very neat.

The Court: There may be objection to some.

Mrs. Barnes: Oh, I see. O.K., your Honor.

Again, your Honor, we have three motions, the motion to dismiss, the motion to set aside and vacate the ex parte judgment, and a great many witnesses do testify on all three subjects.

The Court: The Court will consider them as applicable to whatever they refer to. [295]

\* \* \* \* \*

The Court: Well, you be seated on the witness stand and read it, and Mr. McKendry may read the questions if you wish.

Mrs. Barnes: Jules F. Koch.

The Court: These were taken pursuant to the agreement?

Mr. Weymann: That is correct.

The Court: You may ask the first question, and you may answer.

(The deposition of Jules F. Koch was [296] thereupon read, as follows, Mr. McKendry reading the questions, and Mrs. Barnes reading the answers):

#### DEPOSITION OF JULES F. KOCH

“Q. Will you please state your name and residence?

(Deposition of Jules F. Koch.)

“A. Jules F. Kock, J-u-l-e-s F. K-o-c-h, Route 1, Box 273, Lancaster, California.

“Q. And your profession.

“A. Rancher.

“Q. Do you own property in the vicinity of the Edwards Air Force Base? “A. I do.

“Q. Will you state whereabouts it is.”

The Court: Was this one of the deponents you named at the last hearing of court?

Mrs. Barnes: Yes, your Honor. He stayed right here in Fresno.

“Q. Will you state whereabouts it is.

“A. Do you want the legal?

“Q. Well, you may as well give the legal.

“A. Section 34, Township 9, North, Range 10 West, San Bernardino Base Meridian, Kern County, east one-half of the west one-half and the west one-half of the east one-half, comprising approximately 320 acres, more or less.

“Q. Physically, in relation to the base, how close is that to the present air base line?” [297]

The Court: Do you have an additional one I might follow?

Mrs. Barnes: I think we do, your Honor. This is the Court's copy. (Handing.)

The Court: I think the last question begins at line 21.

(Defendants reading:)

“Q. Physically, in relation to the base, how close is that to the present air base line?

(Deposition of Jules F. Koch.)

“A. One-quarter of a mile, approximately, east of the east fence of the reservation as its exists now.

“Q. Don’t you mean west?

“A. Or west, I should say. Pardon me. West of the west line or the west fence of the reservation.

“Q. What sort of business is conducted there on your ranch?

“A. In one building I have a bar and a restaurant in a portion thereof, and a furniture store in the other portion.

“Q. What are the ranch activities?

“A. Cattle, hogs, hay and grain.

“Q. Do you have any sporting events there, such as hunting, and so forth?

“A. Yes, I have some duck ponds; I have 11 duck ponds for private duck shooting.

“Q. Is your place under any condemnation by the United States Government at this time?

“A. Not at this time, no.” [298]

Mrs. Barnes: Now, Mr. Weymann, do you want to play your part? You say “Objected to as immaterial.”

The Court: Mr. Weymann will make the objection.

Mrs. Barnes: The only thing is, your Honor, there was a great deal where they brought out the maps.

The Court: Just proceed with line 19, please.

(Defendants reading:)

“Q. I am going to show you some photographs

(Deposition of Jules F. Koch.)

made of some maps or enclosures which were in court on October 27 or October 30th, I guess.

“Mr. Weymann: Could we see them?”

“Mrs. Barnes: You have seen them, I presume. You made them. These are identified as joint exhibits, I believe, and the judge put them in as joint exhibits.

“Mr. Weymann: Two, three and four.

“Mrs. Barnes: Oh, yes, two, three and four. They were later named as joint exhibits. It doesn't matter, but I remember that is the way they were put in.”

The Court: Begin at line 7.

(Defendants reading:)

“Q. Do you recognize the general outline as you see it there? To the north here is Mojave, and here is Lancaster. “A. Yes. [299]

“Q. And would you say—

“A. I can recognize the delineated area there.

“Q. Would you say your property is within that area? “A. Yes.

“Q. You see where this is listed ‘Military reservation’? “A. Yes.

“Q. Has the government made any attempt to make you an offer for your property? \* \* \* \* \*

“Q. On September 9th in Fresno, September 9 of 1953, Colonel Akers was on the witness stand and I asked him a question as follows:

“Q. In fact there is other property in the same

(Deposition of Jules F. Koch.)

vicinity that isn't owned by the government, is that correct?      'A. I do not know.

'The Court: Is it in the runway portion, the other property?

'The Witness: Which other property, your Honor?

'The Court: Owned by other persons?

'The Witness: Yes, sir. There is other property in the runway area. Whether or not all the other property has been acquired or [300] not is a thing I do not know.'

"Mr. Koch, is your property under condemnation at this time?"

The Court: Mr. Weymann.

(Defendants reading:)

"'Mr. Weymann: It is under condemnation.'

"Mr. Koch, is your property under condemnation at this time?      "A. It is not.

"Q. Have they ever made you an offer for your property?"

Mrs. Barnes: Mr. Weymann made a remark.

The Court: There is no objection being made now.

Mrs. Barnes: Go ahead, Mac.

(Defendants reading:)

"Q. All right. Will you please answer the question.

"A. They made me an offer this past week.

"Q. Since I have seen you?

"A. Since I have talked to you.

(Deposition of Jules F. Koch.)

“Q. Have they never filed any condemnation papers against you?      “A. No.

“Q. How long have you lived there, Mr. Koch? How long have you owned the ranch? [301]

“A. I have had title to it since 1940, I believe it is.

“Q. Is there a public road in the vicinity of your ranch, a county road?

“A. Yes. It fronts south of my property; it is my south boundary line.

“Q. Is there a main county highway adjacent to your property on the east side of your property?

“A. There is.

“Q. That would be designated as what? What is that?

“A. The Kern County map has it designated as Redmand Road, otherwise known as Lancaster-Muroc Road.

“Q. What direction does that run?

“A. It runs north and south. Also, it is designated as 120th Street East in the County of Los Angeles.

“Q. Mr. Koch, was that property ever zoned by the Kern County Planning Commission, do you know?      “A. It was.

“Q. Will you please explain what happened regarding that.”

Mrs. Barnes: And Mr. Weymann objected.

“Mr. Weymann, I will make an offer of proof on this: When the Air Force—and which I mean to prove——” [302]

(Deposition of Jules F. Koch.)

The Court: Do you want that read, Mr. Weymann?

Mr. Weymann: No.

The Court: Read at line 17.

(Defendants reading):

“Q. Will you please answer the question, Mr. Koch, if you can remember it. If not, the reporter will read it back to you.

“A. The Kern County Planning Commission did zone that area at the instigation of the legal officer there by the name of Major Walter Horlick.

“Q. Were you put to a great deal of concern and trouble in getting a license there? Did you have to take steps?

“A. I was. I had to take steps before the County Board of Supervisors that I was issued a use permit for the development of my property there.

“Q. Did that entail much trouble?”

The Court: Now, that objection is sustained. Do you make that objection?

Mr. Weymann: I renew that for the purpose of the record. I will renew all the objections I have heretofore made.

The Court: The objection is sustained. Do not read the answer. Begin at line 8.

(Defendants reading): [303]

“Q. What steps did you go through to be able to obtain this use permit?”

Mrs. Barnes: Well, I will stipulate everything about the trouble in the zoning there be not read

(Deposition of Jules F. Koch.)

in here because it would simply be following out the objection.

The Court: Then you skip down to where?

Mrs. Barnes: The only thing, I would like to reserve the right to have in the government did go around——

The Court: Well, you don't need to go into it. If there is something you want to present at a later time you may. Where will you skip to in the deposition?

Mrs. Barnes: Well, I would like to go to line 25, page 9.

The Court: You may ask the question.

Mrs. Barnes: "Q. Do you know anything about the operations of the California Central Airlines in regard to the Edwards Air Force Base?"

Mr. Weymann objected here again, your Honor.

The Court: The objection is sustained.

Mrs. Barnes: Do I make an offer of proof later, your Honor? The only thing is here in the record. Could I tell you?

The Court: Just read your offer of proof, line 5.

Mrs. Barnes: "Well, I am going to make an offer of proof on that: I run a flying field on my [304] property and had two airlines, one the Panamint Airlines and one the Desert Airlines, both operating from that field and running up to Inyokern, Los Angeles to Inyokern vicinity; and California Central Airlines wished to use my field, but the Air Force talked them out of using my airport, which is a licensed and proper airport and I op-



(Deposition of Jules F. Koch.)

erate other airlines off of it, and made a deal with the California Central Airlines to operate off of the air base.”

I asked him to show the letter and tickets to prove that they did that in order to stop the operation of my own field.

The Court: Are you reading the next question?

Mrs. Barnes: No.

(Defendants reading):

“Q. Now, Mr. Koch, I am going to show you here a letter addressed to yourself. Would you read that letter into the record. Can you see it?

“A.” This is from “Headquarters, 6510th Air Base Group, Edwards Air Force Base, Edwards, California. 21 December, 1951.

“Mr. J. F. Koch, Route 1, Box 273, Lancaster, California.

“Dear Mr. Koch: [305]

“Reference is made to our conversation relative to your use of the California Central Airlines facilities. I regret to inform you that the privilege afforded you in the past must be continued. Our higher headquarters has indicated——”

Mr. Weymann: Doesn't it say “discontinued?” You read “continued.”

Mrs. Barnes: Thank you, Mr. Weymann.

“I regret to inform you that the privilege afforded you in the past must be discontinued.

“Our higher headquarters has indicated, in writing, that the agency must be limited to patronage by Base personnel only.”

(Deposition of Jules F. Koch.)

And that is signed by "C. A.—"

The Court: Kurpiewski, Major, Air Base Group Commander.

Well, the Court will take a recess at this time.

The next question will be on line 9, page 10.

The Court is now in recess, until 2:30.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:30 o'clock p.m. of the same day.) [306]

\* \* \* \* \*

(Defendants reading):

"Q. Did you receive that letter, Mr. Koch?

"A. I did.

"Q. And until you were stopped from riding on that [308] airline, did you ride that airline?

"A. Yes.

"Q. Is this an airline ticket and time schedule attached to the letter?

"A. That is right.

"Q. Was that your own ticket stub?

"A. That is right.

"Q. From where to where did you ride that airline?

"A. The Lockheed Air Terminal, Los Angeles, to Muroc.

"Q. Do you know, is that a public franchise line, public carrier?

"A. It must have been. I merely walked up and bought a ticket. There was no question about it. I surmised and supposed that it was a fran-

(Deposition of Jules F. Koch.)

chise line. They certainly wouldn't have a schedule of this type unless there was, I take it."

Mrs. Barnes: Pardon me one second, your Honor. Should I mention at these various places in the deposition which motion these various conversations refer to?

The Court: Well, I think you should just read the deposition, have the deposition read. If there is anything you want left out, it is entirely satisfactory to the Court to announce you are skipping that. Is that correct? [309]

Mr. Weymann: That is correct. And it may be understood that my objection is a continuing objection?

The Court: That is understood by the Court.

Mr. Weymann: Very well.

Mrs. Barnes: What I mean is, your Honor, we have three main motions.

The Court: Oh, you don't need to go into that.

Mrs. Barnes: This particular airline that they stopped, they would not allow them to be on my place but allowed them on a secret base.

The Court: You would have to leave that to the Court. If you would read it all without any comment.

Mrs. Barnes: That would have nothing to do with possession. That would be bad faith in the original case.

Now, we will be reading on page 12, line 15?

Mr. McKendry: Yes.

(Defendants reading):

(Deposition of Jules F. Koch.)

“Q. Mr. Koch, were you in court in Fresno on October the 30th, 1953?

“A. Yes, October 27, 28, 29 and 30, four days.

“Q. Well, the judge was sick for two days. I am referring now to the last day in court.

“A. I was.

“Q. Which would be the 30th.

“I am going to read you from that court [310] transcript, Mr. Koch:

“The Court: Colonel’—

“The Court is speaking and Colonel Akers is on the stand. He said, the Court said:

‘Colonel, there is one question I want to ask: Can you point out on this Enclosure No. 1, Exhibit 2, just about where those mud mines are that are being worked on?’

‘The Witness: One qualification, your Honor: The mud mines are not being worked now. Operation of those mud mines has been stopped some time ago. They are located in this general area herein (indicating).

‘The Court: Well, I got the impression from the testimony this morning that they were now being worked, the mud mines were being worked. You say that they are not being worked?’

‘The Witness: Mining operations have ceased as of some time ago; the work being done there now is the process of filling them back up again.’

Do you remember that testimony?

“A. Yes, I have a fair recollection of it.

(Deposition of Jules F. Koch.)

“Q. Mr. Koch, have you been over near those mud mines lately? [311]

“A. Yes, I believe I was over there last week.

“Q. Do you know whether or not they are in operation?

“A. They have a number of draglines there cleaning out those pits and hauling the mud over to the mill.

“Q. Did you see them doing that?

“A. Yes.

“Q. In other words, they are working the mud mines; is that correct?

“Mr. Weymann: That isn't what he said.

“Q. Well, Mr. Koch, would you say that those mud mines are in operation or are not in operation?

“A. Well, I said that they were cleaning the pit there and separating the good material and hauling it over to the mill. You can construe that as only one thing, I would say.

“Q. Did you see any backfilling going on?

“A. No.

“Q. Did you see any indication of work to make any backfill? “A. No.”

Mr. McKendry: The next question is page 15, line 17.

The Court: I didn't hear that remark.

Mr. McKendry: Pardon me. The next question is page 15, [312] line 17.

The Court: Very well.

(Deposition of Jules F. Koch.)

(Defendants reading):

“Q. Mr. Koch, have you had occasion lately to drive between we, the defendants’ property, and Rosamond, California?

“A. Yes. Oh, yes.

“Q. What is the state of the county highway between Rosamond and the defendants’ ranch?

“A. Well, when you say ‘state of the highway,’ I would like to know what you are referring to.

“Q. Well, did the road from Rosamond use to run from Rosamond directly by the defendants’ property? “A. It did.

“Q. Has another road been cut into that county road? “A. There has been.

“Q. When it was cut into the county road, did it cut off the road to the defendants’ property?

“A. It didn’t cut off the road, but it doesn’t look to me like the job was ever completed. The new road was cut into it, but there was a bad detour made on county-road property there and it hasn’t been completed or if it will ever be completed, that [313] I don’t know.

“Q. Well, would it be necessary for a person, yourself, for instance, driving from Rosamond to the defendants’ property, to go out into the desert alongside of the highway to get back onto the Kern County road?

“A. That is on the detour, yes.

“Q. In other words, you have to leave the pavement and detour to get back onto the highway

(Deposition of Jules F. Koch.)

again to get to the defendants' property, is that correct? "A. That is right."

The next question is page 17, line 23:

"Q. Do you know who General Holtoner is, Mr. Koch? "A. Yes.

"Q. Who is he?

"A. The commanding officer of the Edwards Air Force Base.

"Q. Did you ever hear General Holtoner threaten to bomb the defendants? "A. I did.

"Q. Did he mention what he was going to bomb the defendants with? "A. Yes, he did. [314]

"Q. What was it?

"A. A napalm, he called it.

"Q. Napalm bombs?

"A. Napalms. I don't know whether it is a bomb or what it is. Napalm.

"Q. Do you remember approximately when he made that threat? "A. No.

"Q. To refresh your memory, would that have been approximately the 26th of last February? Could that have been then?

"A. Well, it could have been, if that is the time that you served a subpoena on him, and that is the date that this all occurred."

Mrs. Barnes: I think that finishes that particular deposition.

The Court: Very well.

Mr. Weymann: Now, if the Court please, I move to strike the deposition of Mr. Koch as read into the record, on the grounds it is entirely incom-

petent, irrelevant and immaterial as bearing on the good faith of the Secretary, or Assistant Secretary of the Air Force in making the determination to take the subject property.

The Court: You may step down, Mrs. Barnes.

Mrs. Barnes: I would like to make an offer of proof. [315]

The Court: As to this matter?

Mrs. Barnes: Yes, just what he said when he objected to it.

Mr. Weymann: If the Court please, I understood the purpose was to read these depositions into the record.

The Court: That is what it was.

Mr. Weymann: So I think an offer of proof is entirely out of order.

The Court: Yes, it would be. There is no evidence before the Court except that contained in the depositions.

Mr. Weymann: That is correct.

The Court: And the Court has permitted you to read all portions that you deemed to be material. The Court will take it under advisement for the present. Now, you may proceed with your next one.

Mrs. Barnes: This is the deposition of—Mr. Eiland, may the Court have the copy of the deposition of George W. Hodges, taken on behalf of the defendants, on Tuesday, November 17, 1953, at 800 Federal Building, Los Angeles?

Mr. Weymann: The same objection to this, and all subsequent depositions.



The Court: It is understood you make the same objection to each and all of the depositions.

Mr. Weymann: That is correct, your Honor.

The Court: I have it. [316]

DEPOSITION OF GEORGE W. HODGES

Mr. McKendry: On page 2, line 9.

(Defendants reading):

“Q. What is your name, Mr. Hodges?

“A. George W. Hodges, H-o-d-g-e-s.

“Q. What is your profession, Mr. Hodges, and residence?

“A. Mojave, California.

“Q. Your profession?

“A. I am constable of the Mojave Judicial District.”

And the next question is page 7, line 14:

“Q. Constable Hodges, have you had occasion lately to drive on the road from Rosamond that extends to the defendants’ property?

“A. I have.

“Q. Do you know if that is a county road?

“A. Yes.

“Q. Has there been any break or obstruction on that road that you know of? “A. Yes.

“Q. Do you know approximately how long that road has been obstructed?

“A. I couldn’t be positive as to that. It has been a considerable length of time. But as far as giving you an exact time I couldn’t.

“Q. In going from the defendants’ property,

(Deposition of George W. Hodges.)

[317] in going from Rosamond to the defendants' property at this time, what is the necessary procedure?

"A. Well, you have to detour where the intersection of the new Edwards and Rosamond Road comes in for a considerable distance out into the desert, before getting back on to the old Muroc-Edwards Road.

"Q. If you were a guest attempting to get to that ranch, would you consider it difficult to find your way? "A. Yes."

Line 23, same page:

"Q. I want to read to you from the transcript of that case."

The Court: At what place is that?

Mr. McKendry: Line 23, page 8.

The Court: You may proceed.

(Defendants reading):

"Q. I want to read to you from the transcript of that case. Colonel Akers is the witness upon the stand at the time, and the Court asked him this question:

"The Court: Colonel, there is one question I want to ask: Can you point out on this Enclosure No. 1, Exhibit 2, just about where those mud mines are that are being worked on? [318]

"The Witness: One qualification, your Honor: The mud mines are not being worked now. Operation of those mines has been stopped some time ago. They are located in this general area here.

"The Court: Well, I got the impression from the

(Deposition of George W. Hodges.)

testimony this morning that they were now being worked, the mud mines were being worked? You say that they are not being worked?

‘The Witness: Mining operations have ceased as of some time ago; the work being done there now is the process of filling them back up again.’

Did you hear that testimony, Colonel Hodges?

“A. Well, I believe I did, but whether I was in court all the time, whether I could pinpoint that special testimony, I don’t know.

“Q. Well, do you have any knowledge as to whether or not those mud mines are being worked?

“A. Well, I had occasion to go out to the mud mines Monday, yesterday, and I went inside the big plant—well, I went to the buildings, and I contacted the people there and found out that the man I was looking for wasn’t there. But there was, I think, three or four big truck loads of mud that passed me going out of there loaded in the trucks, and there was plenty of mechanics and staff around [319] the buildings there at first; but as far as going out on the lake and seeing where they were getting the mud from, I don’t know. But they were hauling the mud out of there.

“Q. Did you see any indications of a backfill going on at that time?           “A. No.”

Mrs. Barnes: Your Honor, that completes the deposition of Mr. Hodges.

The Court: The same motion?

Mr. Weymann: The same motion, your Honor.

The Court: It is under advisement.

Mrs. Barnes: Mr. Eiland, will you find there the deposition of John Holt, which was taken here because Mrs. Buck took it; it was right here at the court.

The Court: You may sit down, Mrs. Barnes.

Mr. McKendry: It will be on page 2, line 21.

The Court: That is the deposition of John Holt?

Mr. McKendry: Yes.

### DEPOSITION OF JOHN HOLT

(Defendants reading):

“Q. Will you please state your name, sir?”

“A. John Holt.

“Q. And would you please state your address?”

“A. 540 Fourth, Arvin, California.

“Q. What is your position? [320]

“A. Chairman of the Board of Supervisors of Kern County.

“Q. How long have you held that position?”

“A. Approximately three years.”

And continuing on page 3, line 20:

“Q. As well as being Chairman of the Board of Supervisors, you are also the supervisor in charge of that district which is the same district in which the defendants live and where the Edwards Air Force Base is situated, are you not?”

“A. That is right.

“Q. And which district is that, Mr. Holt?”

“A. No. 2.”

Continuing to page 7, line 4:

“Q. You have mentioned, Mr. Holt, that you

(Deposition of John Holt.)

had talked to both Colonel Akers and Colonel Elvin. Did they tell you what roads they were building within the territory which would be taken in in the expansion program of the Air Field?

“A. Yes, they discussed the general program of the proposed roads, particularly speaking, about the north-south road leading from 466 to the road leading into Rosamond, where they are building up this road going through the Wherry Housing project; and at the time this road is constructed it is their [321] intention to turn the road over to the County and then the County abandon the other roads within the reservation, of course with the understanding that the legal aspects must be taken care of as it goes along.

“It is impossible for the County of Kern to abandon any road except under the due process of law.

“Q. When you speak of abandoning roads, specifically did they mention any particular roads to be abandoned?

“A. Yes, that was that portion that this new road would replace.

“Q. And where would that road be?

“A. Well, I can mention—I understand what you mean. It does go by your place. That was a portion of the road that was meant to be abandoned.

“Q. Do I understand you to say that they offered to trade this other road to the County for your abandoning the road that goes by the defendants' property?

(Deposition of John Holt.)

“A. Yes, you could say that that would be the gist of the conversation. After the road, of course, was improved and certain processes of law take place, of abandonment, that was the intent. It was agreed after these processes of law would take place that [322] would take place, we would accept the new road and the County would abandon the other road.

“Q. Was it agreed that the County would then take upon themselves the expense of maintaining this other road?

“A. Yes. The new road you speak of? Yes.

“Q. Have Colonel Akers or Colonel Elvin or any other Air Force officer notified the County, to your knowledge, about cutting into this road that goes by the defendants' property? “A. No.

“Q. Have the officials that we just mentioned contacted the County and asked permission to cut off this road?

“A. No, not to my knowledge they haven't.”

Continuing, your Honor, to page 9, line 8:

“Q. Mr. Holt, what would be the usual procedure when they cut into a road?

“A. Well, I think by State law, to my knowledge anyone that wants to intersect into a State or Federal road, or even a County road or city street, must make the proper application to encroach upon the road, and perhaps have specifications approved as to the standards of the particular road.

“Q. Who would that application be made to?

(Deposition of John Holt.)

“A. It would be made to the Road Commissioner of the County.

“Q. Do you know if the Road Commissioner has ever had an application such as that made to him?

“A. Well, I inquired, of course, as to that, when I heard the road had been cut into, and no application had been made.

“Q. On the County road situated just to the west of Rogers Dry Lake, do you know if a hangar has been located, situated, under the process of construction, right in the middle of a County road, or approximately, in other words, where it was intersecting a County road?

“A. Well, that came to my knowledge when the contractor approached the Board of Supervisors, stating that he had a contract with the Army to build such a structure, and that this work had to be done immediately.

“We, the Board of Supervisors, did not acknowledge that such a building would be constructed, but, wanting to cooperate with the Army, we turned our back on the situation as it is today, and of course today the building is on County property, but it is with our knowledge and approval.

“Our reasoning on this is that the Army does [324] have a bypass or detour around this location, and the general public’s welfare is taken into consideration.”

Continuing, your Honor, to page 13, line 8:

The Court: To what page?

(Deposition of John Holt.)

Mr. McKendry: Page 13, line 8:

“Q. Would you say, Mr. Holt, that the County roads are running much closer, by a question of miles, to the military reservation, than the defendants’ property—than where the defendants’ property is situated?

“A. Are you speaking of the enclosed area, the enclosed gate or area?

“Q. Yes.

“A. Yes. Now, of course, the County roads do run very closely to the main gate of the reservation, or administration buildings.

“Q. It is true, also, that the County roads parallel the west portion of the military reservation, running north and south?

“A. Yes, there is a road, you might say, that bisects through, running from 466 to the County line, the Los Angeles County line.”

Mr. McKendry: That completes the deposition of Mr. John Holt. [325]

Mr. Weymann: The same objection, your Honor; the same motion to strike.

The Court: The Court will take it under advisement.

Mrs. Barnes: Mr. Eiland, the deposition of Arnold F. A. Kluever.

Mr. McKendry: This is the deposition of Arnold A. F. Kluever, taken on Thursday, November 19, 1953, on behalf of the defendants.

The Court: A. F. Kluever or F. A.?

Mrs. Barnes: Arnold F. A. That is correct.



It is a misprint on our copy. Your Honor, you have a corrected copy; we do not have. I believe the Colonel corrected it later.

The Court: Proceed.

Mrs. Barnes: So you may find it——

The Court: It will not make any difference; it is the same man.

Mrs. Barnes: Yes. It may be in some of the testimony, but you will see by your copy.

Mr. McKendry: Page 2, line 24:

DEPOSITION OF ARNOLD F. A. KLUEVER

(Defendants reading):

“Q. Will you state your education, Mr. Kluever?

“A. How far back, college?

“Q. Well, your general training and college [326] education.

“A. Well, I had four years of a five-year course at Iowa State College at Ames, Iowa, in General Engineering and Electrical Engineering.”

The Court: Did he testify here?

Mrs. Barnes: No, your Honor. This is on deposition.

(Defendants reading):

“——in General Engineering and Electrical Engineering, majoring in Technical Journalism. I ran out of money at the end of four years so I didn't finish the five-year course.

“From there I went to C.C.C. duty as a Second Lieutenant in the Field Artillery Reserve four and a half years——”

The Court: It says two and a half years.

(Deposition of Arnold F. A. Kluever.)

Mrs. Barnes: You have a corrected copy. Ours says four years.

The Court: Should it be two and a half years?

Mrs. Barnes: Your copy is correct.

The Court: Two and a half.

Mrs. Barnes: Yes.

(Defendants reading):

“Then to the Air Force Flying Cadet School, and graduated from there in October of 1938, and I have been in the Air Force ever since until my [327] discharge on 5 May of this year.

“While in the Air Force I spent one year in a graduate course in Meteorology at M.I.T. in Cambridge, Massachusetts, and I had a two-year course in Engineering Sciences at the Air Force Institute of Technology at Wright Field, and a six months' course in—I will get the right title—it is Air Installation Engineering course, and then I also had the regular courses at Gunter Air Force Base at the Communications Electronics Staff Officers' School and at the Air Command and Staff School at Maxwell Field, Montgomery, Alabama.

“Q. Did you at any time specialize in meteorology, have special training in that?

“A. I had that the year we took the full year's course of one-hundred and four credits at M.I.T. in seven and a half months. There were four Air Force Officers, four Navy Officers, and the balance of the class was cadets. That was the first year they had commissioned cadets directly from the course as Second Lieutenants in Weather Service,

(Deposition of Arnold F. A. Kluever.)

and I spent three years as Staff Weather Officer.

“Q. Did you ever serve at the Air Base at Muroc, California? [328]

“A. I was sent out to Muroc Army Air Field in February of 1946. I arrived there, I think it was the 9th.

“Q. Did you have command at that Base?

“A. General O'Donnell, Emmett O'Donnell, he sent me out there to take command of the base to replace Colonel Clarence Shoop who was being returned to civilian status. And Colonel Gilkey was on leave and wouldn't be there for at least three months. So I was to take command of the base until Colonel Gilkey's arrival. After Colonel Gilkey arrived I remained as Deputy Commanding Officer for four more months, until August 20 of 1946.

“Q. During the time that you were at the Muroc Air Force Base did you draw any plans for that Base?

“A. I drew the original master plans for the expansion of the Base, in accordance with the directives that started coming from Washington in February of 1946.

“Q. You were there until those plans were completed?

“A. I was the only one, except I had the assistance of two enlisted men in the last two weeks in order to help draw up the necessary copies of the plans. [329]

“Q. How many copies of those plans did you

(Deposition of Arnold F. A. Kluever.)

take back or what did you do with those plans when they were finished?

“A. We made them up in 12 sets; two copies remained at the Muroc Army Air Field, as it was known at that time, and ten copies I flew personally to Wright Field and delivered them to the Air Installation Division under the Air Materiel Command. That is at Wright Field in Dayton, Ohio.

“Q. Was that plan officially approved?

“A. It was.

“Q. You are fully discharged from the Government at this time, aren't you?

“A. That is right; I have an Honorable Discharge.”

Continuing on the same page, at line 23:

“Q. Referring to this original master plan, Colonel Kluever, who instructed you to draw that plan?

“A. Colonel Gilkey.

“Q. Did he as Base Commander at that time approve that plan?

“A. He approved the plan and wrote a letter of commendation for my work on it. I worked day and night and weekends to conclude it, have it finished on time. [330]

“Q. That is the letter we have just referred to, Colonel Kluever? “A. It is.

“Q. Will you please read that into the record?

“A. This is headed, ‘Headquarters Muroc Army Air Field, Office of the Commanding Officer, Muroc, California. It is dated 15 August, 1946.

(Deposition of Arnold F. A. Kluever.)

‘Subject: Letter of Commendation.

‘To: Lt. Colonel A. F. A. Kluever, AC,O-22413’

—that was my serial number before they changed it to a system of regular officers.

‘4144th AAF Base Unit, Muroc Army Air Field, Muroc, California.

‘1. It is with pleasure that I extend to you my commendation for the excellent work you performed while assisting in the preparation of the folder of AAF Basic Information for Master Planning of Muroc Army Air Field, during the period 1 July - 13 August 1946.

‘2. The many extra hours that you put in during evenings and on week-ends denotes a high regard for duty and loyalty to this command and the Army Air Forces.

‘3. A copy of this letter will be placed in your 201 file. [331]

‘S. A. Gilkey, Colonel, Air Corps, Commanding.’”

Continuing on line 8:

“Q. Colonel Kluever, when this master plan was drawn, did it include the taking in of the defendants’ property in this case?      “A. It did not.”

Continuing on page 8, line 12:

“Q. Will you please, Colonel Kluever, and I might say to you that it has been discussed about

(Deposition of Arnold F. A. Kluever.)

the moving of the railroad in the case up in Fresno. Did you advocate at that time that the railroad be moved?

“A. That was included in my plan, to run the railway around the north end of the lake so that we would have one continuous runway the north and south length of the lake.

“Q. There has also been a great deal of talk about the runway which they are starting to construct and which lies in such a line as it would come and be headed towards the defendants’ property. That has been fully gone into. Your general east-west runway that you have in the plan, approximately where did that go?”

The Court: Pardon me. Will you read that, Miss Schulke?

(The record was read.) [332]

Mrs. Barnes: We are on page 8.

The Court: Yes, I have it. You may proceed.

(Defendants reading:)

“A. It went from Muroc Dry Lake across Rosamond Dry Lake, and the way I had it laid out they would put in a twenty-two mile runway with less than 16 inches difference in elevation. The only thing they needed to build the runway was waste oil. The purpose of the waste oil was to cut the mirage down so the pilots wouldn’t land fifty feet too high.

“Q. Now, you have testified that you had special training in meteorology and weather. Was this runway laid out with regard to the local conditions?

(Deposition of Arnold F. A. Kluever.)

“A. Part of the master plan included one sheet in the plan which was the wind rose showing the condition of all the winds——”

Mrs. Barnes: That is wrong the way the court reporter has it. It is “rose” but it sounds the same.

The Court: The answer is “Part of the master plan included one sheet in the plan which was the wind rose——”

Mrs. Barnes: Oh, does it? They have corrected your copy then.

“——showing the condition of all the winds averaged out over the period of the ten previous [333] years, and the two runways that I laid out took in 98 per cent. of all winds during that time.

“Q. Knowing the terrain there at Muroc, would you say that the present runway which would be cutting through where the buildings are now at the Air Base, and running in the direction of the defendants’ property, that if that were ever to be leveled into a flat runway, would that involve considerable excavation and fill?

“A. They would have to make it close to, somewhere around 70 feet or 70 foot cuts through there, and wide enough to clear the runways on both sides for a thousand feet in the danger zone, and there is a danger zone of 1,000 feet difference in elevation extending three miles on either end of each of the runways that I laid out, which is well under that thousand feet. But to lay out a runway the way they have it planned now, as you have explained, it would involve at least several million dollars’ worth

(Deposition of Arnold F. A. Kluever.)

of grading and excavating, not to mention moving buildings and throwing away all permanent installations presently on the base.

“Q. I am going to show you a document here which is noted as Exhibit 4, I believe it is noted as a Joint Exhibit No. 4 in this case, which is the [334] proposed new runway or the runway that they are presently attempting to construct. Is that about what you had in mind on this testimony you have just given? This only shows the proposed runway. This is another map which is the same set, from the same set of the three maps. This is the present concrete runway in front of the two big hangars and here will be the new runway labeled from A to B.

“A. Well, I can show you what I mean. It came from this tip down here across here, which missed your property entirely, and went to the far end of Rosamond Dry Lake, and the danger zones on either side of those runways are completely clear in all directions.

“Q. How far, approximately, would the runway which you drew to the south of the defendants' property missed the defendants' property? Just approximately.

“A. Well, I don't see the hospital area on here, but the runway that I had laid out missed the hospital area which is up on top of the hill under what was the west side of the Base then, and the highway went past there and your property was even further north than the hospital area. The runway which I laid out missed the hospital area. [335]



(Deposition of Arnold F. A. Kluever.)

“Q. Is it correct that that plan would have utilized all the present buildings on the Base?

“A. It would, all except the ones that we were authorized to tear out, which were called A-huts, which had half the roofs off and were unfit for habitation.

“Q. There are two very large, gigantic hangars located there at the Base. Do you know if they were intended to be temporary structures or permanent structures?

“A. Permanent structures and were so classified.

“Q. You mentioned that the original master plan had been approved by Colonel Gilkey; is that correct?

“A. That is right, and then I flew it to Wright Field for approval there at the Air Installation Division. We had a three day meeting there with representatives from all of the other airfields and Air Materiel areas represented under the Air Materiel Command, and every one had ten sets of their plans there and each of them, each set was reviewed and approved there, as far as I know, because after that I left Muroc about a week after I flew up there. I was transferred back to Wright Field to attend a two year school in engineering sciences. [336]

Q. As far as you know, then, Colonel Kluever, the change of plan came after this plan was made, and as you can see by the Air Force maps, which were introduced into evidence up at Fresno, that would have entirely changed the plan?

(Deposition of Arnold F. A. Kluever.)

“A. The only place it fits the plan that I originally drew, was moving the railroad around to the north end of Rogers Lake there.

“Q. Then you would say there was a definite relocation subsequently made of that runway, of the main runway?      “A. Definitely.”

Mrs. Barnes: Your Honor, that completes Colonel Kluever’s deposition.

Mr. Weymann: The same motion to strike, your Honor; that the opinion of this deponent is of no avail to impeach the discretion or determination of the responsible officer of the Air Force. Under the authority of United States against Meyer, it has no bearing on the determination as to what property is to be taken. We are not trying the wisdom or the feasibility of this determination here; all we are trying is the question of good faith.

The Court: The Court will take it under advisement.

Mr. McKendry: The next deposition was of William H. Coffin, taken on Thursday, November 19, 1953, on behalf of [337] the defendants.

Mr. Weymann: What deposition is that?

Mr. McKendry: William H. Coffin. Starting on page 2, line 8:

## DEPOSITION OF WILLIAM H. COFFIN

(Defendants reading:)

“Q. Mr. Coffin, will you please state your name.

“A. William H. Coffin.

“Q. What is your residence address?

(Deposition of William H. Coffin.)

“A. 2310 North Vermont.

“Q. What is your profession?

“A. Airport operator.

“Q. Are you a pilot? “A. Yes.

“Q. How long have you been a pilot?

“A. Since 1924.

“Q. How long have you been operating—I presume, of course, you have been operating aircraft since 1924, then. “A. Yes.

“Q. How long have you been an airport operator?

“A. Possibly '34 or '35. I am not exactly sure. It was when I first reached Alhambra.

“Q. Were you operating an airport on December 7, 1941? “A. Yes. [338]

“Q. Where was that? “A. Vail Field.

“Q. Where is that located in relation to Los Angeles? “A. East Los Angeles.

“Q. Was this airport closed due to the war emergency? “A. Yes.

“Q. Was it closed for the entire duration of the war? “A. No.

“Q. Approximately when was it first opened?

“A. On February 6, 1944.

“Q. When this airport was first opened, were there any special restrictions? “A. Yes.

“Q. Could you explain those?

“A. From February 6th, 1944, to June the 3rd, we were only allowed to fly in and——”

it says “put” but it should be “out of Vail.”

(Deposition of William H. Coffin.)

The Court: I think the word should be "out" instead of "put", "in and out" it should be, "allowed to fly in and out of Vail Field."

(Defendants reading:)

"—under an authorized flight plan, the flight [339] authorization which was given to us by the Civil Aeronautics Authority, and in conjunction with the West Coast Defense under the command of Commander Black.

"Q. What was the date, then, that that special qualification ended that you have stated there?

"A. Well, on June the 3rd of 1944 we started operating right from Vail Field, back on Vail Field in a—we had a corridor in the vicinity of Vail Field which was assigned to Vail Field, Monrovia and East Los Angeles.

"Q. Were all the airports operating the same way at that time?

"A. Yes, we all opened on that same day for student instruction.

"Q. You have mentioned student instruction. Was there any other kind of flying?

"A. Oh, yes, we were allowed to continue, of course, these flights in and out of the zone, fly wherever we chose at that time.

"Q. Did you do any charter work?

"A. Yes. The charter work was opened to all airports at that time anywhere on their flight plan.

"Q. And you could fly the passengers or people

(Deposition of William H. Coffin.)

that wanted to hire the plane could take them; [340] is that correct? "A. Yes. That is correct.

"Q. Are you at this present time operating and running an airport? "A. Yes.

"Q. What is the name of that airport?

"A. Whiteman Airport.

"Q. Approximately how many airplanes do you have on that airport?

"A. Well, between 200 and 230. It fluctuates with the transients.

"Q. Where is that airport located?

"A. Pacoima.

"Q. Is that in the San Fernando Valley area?

"A. In the San Fernando Valley.

"Q. Are you acquainted with the defendants' airport? "A. Yes.

"Q. Approximately how close is it by air to your airport? "A. Forty miles.

"Q. Do ships from your airport ever have occasion to land on account of weather out of the area? "A. Yes. [341]

"Q. Are they known to sometimes land at the defendants' airport? "A. Yes.

"Q. Would you consider that the defendants' airport is of necessity to commercial aircraft?

"A. Yes. I will qualify that, particularly since Palmdale has been closed for commercial aircraft. There is nothing else in that area.

"Q. I would like to have you qualify yourself. For instance, do you hold a CAA license?

(Deposition of William H. Coffin.)

“A. Yes.

“Q. What ratings do you hold?

“A. All ratings, land and sea, single and multi-engine.

“Q. Approximately how many numbers of hours do you have in the air?      “A. Over 13,000.

“Q. Do you have any ground-school ratings?

“A. All ratings.”

Mr. McKendry: Your Honor, that completes the deposition of William H. Coffin.

Mr. Weymann: The same motion.

The Court: You make the same motion, and the Court will make the same ruling.

Mr. McKendry: This is the deposition of [342] Don Dwiggins, taken on behalf of the defendants, on November 19, 1953.

Mrs. Barnes: In order to cut this short, I have taken a little squib out of page 6.

Mr. McKendry: Page 6, line 1.

The Court: I am sorry.

Mr. McKendry: Page 6, line 1, in order to shorten it.

The Court: I understand. On page 6, line 1. Very well.

## DEPOSITION OF DON DWIGGINS

(Defendants reading:)

“Q. Mr. Dwiggins, do you have occasion to use the defendants' property, the airport on the defendants' property from time to time?

(Deposition of Don Dwiggins.)

“A. I have used it frequently in my business as a reporter covering aviation stories and disasters. I have used it frequently in flying with the privilege of a private pilot, not a commercial pilot, although I hold a commercial license, several times when I was unable to get into Los Angeles due to the weather conditions. During those times I have used it.

“Q. Do you feel the defendants’ field is helpful to or necessary to private aviation?”

“A. Yes, I definitely do.”

Mr. McKendry: Your Honor, that completes the portion of the deposition of Don Dwiggins.

Mr. Weymann: The same motion. [343]

The Court: The same ruling is made. I think the Court will take a recess.

(A short recess was taken.)

The Court: Take the stand, Mrs. Barnes.

Mr. McKendry: This is the deposition of E. B. Hatcher, taken on behalf of the defendants on Thursday, November 19, 1953, starting on page 2, line 10:

## DEPOSITION OF E. B. HATCHER

(Defendants reading:)

“Q. What is your name?”

“A. E. B. Hatcher, H-a-t-c-h-e-r.

“Q. Your residence address.

“A. 3608 Buckingham Road, Los Angeles 16.

“Q. Your profession.

(Deposition of E. B. Hatcher.)

“A. I am a detective sergeant attached to the main office detective bureau in charge of the arson detail of the Los Angeles County Sheriff’s Office.

“Q. What does your profession consist of, Mr. Hatcher?

“A. Well, I am primarily charged with the responsibility of the investigation of all suspicious fires that occur within the County of Los Angeles in that unincorporated portion patrolled and maintained by the Sheriff of Los Angeles County. In addition, I conduct investigations to determine the cause and origin of fires within the 44 cities within the [344] County of Los Angeles at the request of either the Chief of the fire department or the Chief of the police department in that city. In other words, the only city where we do not conduct an investigation is the City of Los Angeles. But we only conduct those investigations in those other cities at the request of the Chief of the fire department or the Chief of the police department.

“We are also available for the checking of the cause and origin of fires on loan to any other county or governmental agency.

“Q. How long have you been doing this kind of work?

“A. I have been in the fire investigation field approximately 25 years, of which since September the 20th of 1947 I have been in charge of the arson detail.

“Q. Do you know if there has been a great many incendiary fires around the town of Lancaster?



(Deposition of E. B. Hatcher.)

“A. There have been.

“Q. Have there been a good many incendiary fires around the town of Mojave?

“A. There were in past years.

“Q. Did they have a good many incendiary fires on the air base? [345]

“A. To my knowledge there were three that were suspicious on the air base.

“Q. Chief Hensley testified in Fresno under questioning as follows:

‘Q. How many incendiary fires, chief, did you have on that base, approximately?’

Then his answer was:

‘A. I would only be able to give an approximate estimate, but I would place it between twelve and fifteen incendiary fires.

‘Q. Was the officers’ club one of these fires?

‘A. That is correct.

‘Q. Did you report it as an incendiary fire?

‘A. Well, I endeavored to.

‘Q. What do you mean when you say you endeavored to?

‘Now, the Court interrupted here and was wondering what this had to do with the case. Mr. Weymann made some objection and then finally the Court told me to go ahead.

‘Q. Were you requested to change your report, Chief Hensley? ‘A. That is correct.

‘Q. Who requested you to change your report?

‘A. Lieutenant Colonel Rau.

(Deposition of E. B. Hatcher.)

'Q. Who is he?

'A. He was the Executive Officer to the air base, to the base commander.

'Q. Who was the base commander?

'A. Colonel S. A. Gilkey.'

"Could they have had other incendiary fires than you would know about? "A. Oh, yes.

"Q. In other words, you would only know about them if you were called in for some reason or because that is Kern County you would be brought in, is that correct? "A. That is correct.

"Q. Is it true that there was a definite suspect who was an enlisted man on the air base and who, there was a good reason to believe, was the author of many incendiary fires? "A. There was.

"Q. Was this same suspect seen at the fires in the Lancaster area?

"A. Well, I might explain the answer to that question. As a result of an investigation of approximately five incendiary fires in the Lancaster area, and knowing to my own knowledge during that [347] investigation that there were three incendiary fires in the town of Mojave, and subsequent knowledge that there had been at least two suspicious fires on the base, to wit, the officers' club and the non-commissioned officers' club, a check was made as to the times and dates when these fires occurred and as a result of that check it was noticed that in each case the time of the fire was at an approximate time that it would take a person coming from either Lancaster or Mojave to the base, and also that the

(Deposition of E. B. Hatcher.)

fires were at a time when someone leaving Lancaster at the hours when we had had our fires would be on the base. In other words, the time element matched up. This resulted in a conclusion that we had either civilian or Air Force personnel as a possible suspect who was setting these fires on the way home after a 2:00 o'clock closing hour of the bars.

“As a result of that investigation we received permission from my superior, the captain of the detective bureau, to proceed to Kern County and particularly to Edwards Air Force Base and Mojave, for the purpose of getting additional information concerning the background of these reported suspicious fires. And this was done. It was done almost immediately after an incendiary fire which [348] occurred on January the 30th of 1948, at 4:20 a.m. at the Roosevelt Store in Roosevelt, which is slightly east and north of the town of Lancaster. And that fire was the final tie-in with the other series of fires which we had had in the immediate area.”

Continuing on the same page, line 19:

“Q. Mr. Hatcher, when did you first know the defendants in this case?

“A. Well, I was introduced to the defendants in this case, I believe, in the latter part of—I would say the latter part of 1947, probably sometime between July and September 1st of 1947, when another investigation took an officer from the Lancas-

(Deposition of E. B. Hatcher.)

ter Station to the area of the ranch in question in this case.

“Q. Did you go to the air base and make investigations there?

“A. I went to the air base to correlate for, concerning the fires on the base and to advise the commandant of that base that in our opinion there was personnel on the base responsible for the fire, and that I felt that the fire hazard of this type of individual and on such a base was of vital importance to the security of the base itself.

“Q. Did you get any cooperation from them? What was their attitude?

“A. Well, I might say this: That on the first two visits to the base I was unable to contact anyone in authority there. In other words, let's put it this way: I felt in my own mind that the problem which we had here deserved only the attention of the commandant or his executive officer, and I made three calls to the base, stating in brief my business to the gate officer in the provost marshal's office, at which time information supposedly was relayed to either the executive officer or the commandant, and each time I was refused admittance to see them. It was not until a third try after some telephone conversations by this defendant that I was admitted onto the base. However, after I was admitted to the base, they were very pleased to receive the information which I had to give them, and we made arrangements whereby further investigation would be correlated. But upon a subsequent return to the base

(Deposition of E. B. Hatcher.)

to get that information, I received no cooperation and to this date, other than—in other words, as far as I am concerned, the issue is closed with the later apprehension of the suspect in an attempt to set fire to the defendants' property, his arrest on a charge not of fire-setting, because it did not [350] go far enough to make that charge, and his subsequent transfer to the hospital, the Letterman General Hospital in San Francisco, and his further discharge as a schizophrenic under Section 8. But we are vitally interested in this man because of his pyromaniac tendencies and especially in view of the fact that this suspect now resides inside—in Palmdale in Los Angeles County, and also that I have received recent information through confidential sources that the suspect has——”

The Court: Did you say “suspect” or “subject”?

Mrs. Barnes: Yes, it is subject.

“——that the subject has tried on several occasions for further civilian work at Edwards as well as at Lockheed at the Palmdale Airport.

“We ran quite an extensive surveillance of this individual at the time when we had three incendiary fires in the Lancaster-Palmdale area, at a time when he was most likely to be active; to wit, when his wife was pregnant.

“In other words, for the purposes of this record I don't mind telling you that it is the opinion of

(Deposition of E. B. Hatcher.)

this person, of myself, that this man, in addition to being a schizophrenic is a very bad type of sexual pyromaniac. [351]

“Colonel Sacks: Sexual pyromaniac?”

“The Witness: Now, there are a lot of people that do come under that heading, and, Colonel, I will be glad to discuss it with you later. In other words, where the motive for the setting of the fire is purely sexual, and it is a field which has recently been opened up and we have quite a bit of research on it. That is one of the reasons why I believe—and I am just bringing this out now—why at the recent fire which the defendant had on her property, there was a request by the Sheriff of Kern County for my assistance in the investigation of this last fire because of the knowledge I had of this suspect and the possibility that this suspect might have been the suspect that could have done any damage to the ranch of the defendant at this later fire. That investigation at the present time has not been completed. We are working in conjunction with the Kern County Fire Department and the Sheriff’s Office in Kern County in the investigation of that fire.

“Q. Mr. Hatcher, did you talk to the suspect in the Bakersfield Jail?            “A. I did.

“Q. Did he have with him at the time of his arrest materials and all that is necessary to set a fire? [352]            “A. He did.

“Q. Would that type of fire that he set be a delayed fire?

(Deposition of E. B. Hatcher.)

“A. It could have been if he had the knowledge for the delayed-action arrangement.

“Q. In your conversations with Colonel Rau and Colonel Gilkey at the air base, did they tell you that this man was a very intelligent man?

“A. They did.

“Q. Did they say that he could not possibly have been a suspect because of his great intelligence?

“A. I don't believe they made that statement.

“Q. Tell me what they did say.

“A. Well, briefly, they were greatly appalled that I picked on this individual. Subsequently quite a discussion was had after perusing his 201 File, and the particular thing that worried Colonel Gilkey was the fact that the boy was assigned with an unlimited pass to go over the base as the driver of the high-octane gasoline truck, from which I understand he was immediately removed. However, they not being familiar with—well, let's put it this way: Their not being familiar with sexual pyromaniacs and pyromania in general, they were at a loss to understand why a man of supposedly this high IQ and above-normal [353] intelligence which he had exhibited in his career in the Army would do such a thing as this. And I believe that I convinced them after further discussion that they still had a No. 1 suspect in this man, and as I say, subsequent action by the Army proved the case.

“To my knowledge, during his stay in Letterman General Hospital among other things he was given

(Deposition of E. B. Hatcher.)

the test by the doctors there with the use of sodium pentothal as a truth serum, under the influence of which he admitted three fires in Los Angeles County and two in Mojave in Kern County, but failed to say anything about the fires upon the base; and, of course, in my opinion, rightfully so in view of the fact that one of them in which personnel were lost would constitute a charge of murder. In view of the fact that this test is not admissible in court, no further action could be taken. Actually, in my own mind, I felt that they erred a little bit in not continuing the further interrogation on those lines, because I thought they had a number one suspect. I think, I still think he is a number one suspect.

“Q. Can you account for the lack of cooperation on the air base with myself and the Lancaster authorities which took place in that period before we [354] finally apprehended him at our hangar?

“A. I would have no way of knowing what that is attributable to.

“Q. Mr. Hatcher, do you remember how long the jail sentence was that this pyro received?

“A. I know, to my knowledge, that the charge at the time of his arrest and plea was set at six months. I also know that the sentence was modified as to the time served, but I don't know what the date was.

“Q. Mr. Hatcher, have you had occasion lately to drive from Rosamond to the defendants' property?  
“A. I have.



(Deposition of E. B. Hatcher.)

“Q. Did you find that a new road had been cut into the old Kern County road?

“A. Well, there is a new road that makes a “Y” out of the old road that formerly went to your property, about halfway between your property and Rosamond.

“Q. Is it possible to drive on a straight paved road all the way to the ranch now, or is it necessary to turn out into the desert to get through that road?

“A. Well, at the point where the former road and running straight—if it is east—I don’t know the directions, probably mainly east—there is a [355] road larger than that road. I always knew it as the Rosamond-Muroc Road. At this point where the new road joins there are barricades erected showing the road to be closed from both directions and it is necessary to drive out on an apparently graded but very rough portion of sand to the south of the main old Muroc Road for approximately four-tenths of a mile, at which time you come back on the paved portion of the Rosamond-Muroc Road and go to the defendants’ property.

“Q. While you were up in that area the other day, Mr. Hatcher, I made a request of you, in that you were a witness who was going to testify here, to make a trip out to look at the mud mines on Rogers Dry Lake over at and on the air-base property. Did you do that?      “A. I did.

“Q. There was testimony in court in Fresno wherein the Court himself asked Colonel Akers, who was the witness on the stand, if those mud

(Deposition of E. B. Hatcher.)

mines were operating, and Colonel Akers testified that they were not operating and had not been operating for some time. He further went on to say that any operation of the mud mines out on the lake there was simply filling in the holes where the mud mines [356] had been.

“Will you explain what you saw at the mud mines.

“A. Well, we went out in a car to the farthest east mud mine, went by and across the railroad tracks and came back nearer camp to the portion where some type of mill was in full operation. We went by the mill further to the west and went into the pit area, and from my observations at that time, why, they were doing nothing but taking dirt from the pit area, loading it into trucks and trucking it to the mill.

“Now, what that consists of, I am not familiar with the mud-mining operation, so I know nothing except what I saw. But in relation to this, there was no evidence to me that they were filling in any mud; they were digging the dirt out.

“Q. When did you see this, Mr. Hatcher?

“A. Last Wednesday. That would be the 18th.”

Mr. McKendry: That completes the deposition of Sergeant Hatcher.

Mr. Weymann: The same motion.

The Court: The same ruling; the Court will take it under advisement. [357]

\* \* \* \* \*

EUGENE S. McKENDRY

called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mrs. Barnes): Mr. McKendry, will you please state your full name?

A. Eugene S. McKendry.

Q. How do you spell that?

A. M-c-K-e-n-d-r-y.

Q. Your residence is located where?

A. At Muroc, California.

Q. What is your profession? A. Rancher.

Q. Are you a defendant in this case?

A. Yes.

Q. When were you first told that the Air Force intended to take our property?

A. Approximately November 1947.

Q. Who told you?

A. Colonel Gilkey, the commanding officer of Muroc Air Force Base.

Q. Did he tell you the property was necessary?

A. No. [361]

\* \* \* \* \*

Q. (By Mrs. Barnes): Mr. McKendry, we have a case here in which we contend that the government is attempting to, or as has been set out have already taken our property. Do you consider—were you present at the time that appraisals were made of this property?

Mr. Weymann: I object to the form of the ques-

(Testimony of Eugene S. McKendry.)

tion, in the first place, and I object also to the question itself. Whether he was present at the time that the appraisals were made has no bearing on the determination to acquire this property under condemnation.

The Court: Read the question.

(The question was read.)

The Court: That is a preliminary question. You may answer that.

A. Yes.

Mrs. Barnes: Your Honor, in order to shorten the case I am not going to go through the various acts as when they tried to, you know, make so low an appraisal. I am going to ask of the only one of record.

Q. (By Mrs. Barnes): Mr. McKendry, were you present when Mr. Bernard Evans made his appraisal of the ranch? A. Yes. [364]

Q. Were you with him throughout the appraisal he made? A. The entire time, yes.

Q. Approximately what time did he arrive there at the ranch? Approximately? Did he work all of one day?

A. No, he arrived late in the morning of one day, left in the mid-afternoon, arrived a little earlier the following day, and left again in the mid-afternoon.

Q. The first day that he came, was he alone?

A. Yes.

Q. Was he alone the second day? A. No.

Q. He had a man helping him the second day?

(Testimony of Eugene S. McKendry.)

A. Yes. [365]

\* \* \* \* \*

Q. (By Mrs. Barnes): Well, Mr. McKendry, did you go out to the mud mines? A. I did.

Q. Did you look at what they were doing?

A. Yes.

Q. Were you here in court on October 30th, I believe it was, and heard Colonel Akers tell his Honor in court that they were not operating?

A. Yes.

Q. Did you hear him tell then that they were just backfilling? A. Yes.

Q. When you looked at the mud mines, what did you see?

A. They were bulldozing up the mud in the bottom of the pits, loading that with draglines, and taking it to the mill for processing, all right on the dry lake.

Q. Was there backfilling going on?

A. No; they were taking out dirt. [368]

Q. Have you in the last several days been to the United States Army Engineers, the District Engineer's office in Los Angeles? A. Yes.

Q. Did you procure a bid to refill those mud mines? A. I did.

Mr. Weymann: That is objected to; it has no bearing on the issues in this case. We are not trying the question of the acquisition of the mud mines, we are trying the question of the good faith of the Secretary of the Air Force in determining that the Pancho Barnes property is required for the use of

(Testimony of Eugene S. McKendry.)

the Air Force. What is done with the mud mines, or any other property here is entirely irrelevant and immaterial.

The Court: Mrs. Barnes, the Court is inclined to sustain the objection. What have you to say?

Mrs. Barnes: Well, your Honor, I believe that the United States Government is discriminating against the defendants. In other words, I think this is a plain case of discrimination.

Also when you asked the question it must have at the time occurred to you it was a relevant question or you would not have asked Colonel Akers. In others words, they want to give us 30 to 60 days to move and yet they are operating a mud mine right in the path of the proposed runway. [369]

\* \* \* \* \*

Q. (By Mrs. Barnes): Mr. McKendry, the government brought in certain maps which I believe were in evidence here, or for identification, which showed nine accidents in little green marks on the map, that had occurred they claimed on the air base.

You heard the testimony of Fire Chief Hemsley regarding those accidents, and I am going to ask you how many accidents, to your knowledge, happened on that lake that were classed as crashes.

A. In that four-year period testified to there were three. [371]

The Court: What is the answer? Three?

The Witness: Yes.

The Court: Any further questions?

(Testimony of Eugene S. McKendry.)

Q. (By Mrs. Barnes): Did you know the pilots that flew those ships? A. Yes, personally.

Q. How many of those pilots were killed?

A. One.

Q. Who was that?

A. Commander Wood.

Q. When did you talk to him previous to the accident?

A. The night before, I had dinner with him, and was also with him two nights before that.

Q. Was one of those accidents simply a taxi accident? A. Yes.

Q. Was it intended that aircraft should fly?

A. No.

Mr. Weymann: Just a moment. That is calling for the conclusion of the witness.

The Court: I think it does; objection sustained.

Q. (By Mrs. Barnes): Did you talk to the pilot in the aircraft? A. Yes.

Q. Then you know him well?

A. I knew him well. He was where I was [372] teaching flying.

Q. The third accident, the third crash landing or whatever it was, who had that?

A. Captain Yaeger.

Q. Do you know him? A. Very well.

Q. Are you sufficiently acquainted with all the test pilots, if there had been any other crashes would you be apt to know about it? A. Yes.

The Court: You said three?

(Testimony of Eugene S. McKendry.)

The Witness: Yes, sir.

Q. (By Mrs. Barnes): Did the defendants in this case use to have airlines using their airport as an intermediate stop?

Mr. Weymann: That is objected to as incompetent, irrelevant and immaterial; it has no bearing on the issue in this case.

The Court: Well, there has been some testimony in the depositions in regard to that. I think really the question is immaterial.

Mrs. Barnes: This is a bad faith case.

The Court: The testimony must be confined to bad faith.

Mrs. Barnes: I would like to make an offer of proof. When we have an adequate airport, as testified to by several [373] people, including Mr. Hook, who was head of the airports for the United States Government for the eleven Western States, and it was testified we did have these airlines running in and out of our airport; when the Air Base itself takes an airline from us that wants to use our landing field and has it land on the Air Base, by-passing us; when they find out later there are civilians that would like to use that airline and get off at our air field they are made an offer to land at the Air Force field, and then they stop them from using the airline, it is bad faith, your Honor.

We have an adequate airport, your Honor. There is an airport at Inyokern, the airlines run there and the Navy—the airlines used the civilian airport:



(Testimony of Eugene S. McKendry.)

they did not land on the secret base. But here they have sold tickets and they have had them land at Muroc, because they were trying to get us out of business, and they have tried to squeeze us out for years, rather than make a sort of gentlemen's proposition on the thing, your Honor.

The Court: Have you any further questions?

Mr. Weymann: I object, your Honor, to these private conferences with the witness.

The Court: They are both parties to the action.

Mr. Weymann: That puts the plaintiff under a disadvantage.

The Court: The Court will permit them to have a conference, if necessary. [374]

Mrs. Barnes: I think at this time, your Honor—I really hate to do this because you may not like it, but I would like to ask him questions pertaining to the differences between the maps that were in court September 9th and the maps in court October 27th. Would you have objection to him answering questions on that, or would you rather not hear about it?

Mr. Weymann: I think the Court has already determined that.

The Court: It is not what the Court wants. If you think it is a proper question, you may ask it, but it seems to me,—The Court will not make any statement. You proceed in your own way.

Q. (By Mrs. Barnes): Mr. McKendry, this is a case of bad faith. Did you see the maps brought

(Testimony of Eugene S. McKendry.)

into court by the government on September 9th?

A. Yes.

Q. Who produced those maps?

A. Colonel Akers produced the maps while on the stand.

The Court: Well, the government produced the maps, as I recall it.

Mr. Weymann: That is correct.

Mrs. Barnes: According to the transcript, your Honor, and according to the argument as I remember it and as [375] Mr. McKendry remembers it, the government did not produce the maps. Colonel Akers had them with him and produced them.

The Court: He was a witness on behalf of the government.

Mrs. Barnes: Yes. Colonel Akers produced the maps. Did he say he prepared those maps?

The Court: Well, we have the transcript on that, if you want to refer to it. It would be better than Mr. McKendry's testimony, but I recall, I think there were two maps.

Mr. Weymann: Three.

The Court: Might have been three maps, and they were presented here by the witness for the government, so you may examine in regard to those.

Q. (By Mrs. Barnes): Did you observe those maps closely? A. Yes.

Q. Do you remember a statement by Mr. Weymann regarding that particular map?

A. Yes.

(Testimony of Eugene S. McKendry.)

Q. What did he say he was going to prove to the Court?

A. That the defendants' property was in the very center of the Edwards Air Force Base.

Q. Did the maps at that time show the defendants' property in the approximate, very center of the base? A. Yes.

Q. Did the maps at that time show the high altitude [376] speed course running slightly north of the defendants' property but extending exactly over the town of Rosamond? A. Yes.

Q. Did those maps at that time show some extended paddles of flight patterns?

A. They showed three paddles only.

Q. There were no more than three paddles on the first map? A. That is correct.

Q. Did those paddles practically converge on the defendants' property?

A. All three converged on the defendants' property.

Q. Did the original maps you saw on September 9th include the towns of Mojave and Lancaster?

A. No, they did not show them whatsoever.

Q. Did the maps that were here on September 9th show, where the spots on the lake are, were they grouped in a more round or buckshot pattern than the later ones? A. Yes.

The Court: First, I want to ask Mr. Eiland: Are there three maps in evidence in this proceeding now?

(Testimony of Eugene S. McKendry.)

The Clerk: I believe there were three here, supposed to be. Three maps at least, or more than that.

Mrs. Barnes: The three I am referring to, I think.

The Court: I just wanted to know if they are in [377] evidence. Mr. Weymann offered them in evidence at one time and I said I didn't believe it was necessary; but they are in evidence now, are they, Mr. Eiland?

The Clerk: Yes, if these are the maps, they are in evidence. If those are the three maps, each one of those is in evidence.

The Court: I just wanted to be sure they are in evidence.

The Witness: They are in evidence; I checked.

The Court: Mr. McKendry says he checked. Have you any further questions?

Mrs. Barnes: Yes, as long as we have them out I would like to show them to Mr. McKendry.

The Court: I think you have inquired about the maps.

Mrs. Barnes: There is one question.

The Court: You go ahead; ask any question you want.

Q. (By Mrs. Barnes): The original maps on September 9th, did they show the defendants' property approximately in the center of the maps, as drawn?      A. Yes.

Q. About how far east did those maps extend?

A. The map extended only to the east edge of Muroc Dry Lake.

(Testimony of Eugene S. McKendry.)

Q. Now, on October 27th were three maps produced in court? [378]           A. Yes.

Q. Would you say those were the same maps?

A. No, they are not the same maps.

Q. Did they show a larger extent of territory?

A. Yes, they showed the present air base and the proposed air base also, while the one on September 9th did not show even all the present air base. The ones on October 27th extended another twenty, thirty miles east of Muroc Dry Lake, which the other did not show.

Q. Thereby being a considerable increase in the number of paddles shown on flights?

A. Yes, September 9th showed three runways only, and the October 27th map showed eight runways with sixteen paddles.

Q. Did the high altitude speed course show on the October 27th maps at the same place that it showed on the ones of September 9th?

A. No, it had been changed so that the straight line of the speed course did not go directly over Rosamond, just the circle, the dumbbell portion, while on September 9th the line went directly over Rosamond.

The Court: If you are finished with this witness, the Court is prepared to make an order in regard to the supplemental amendments that were offered today. Have you finished with Mr. McKendry?

Mrs. Barnes: If you want me to be. [379]

\* \* \* \* \*

The Court: Mr. Eiland, the Court will permit the supplemental amendments, one amendment to the motion to dismiss, and one amendment to motion to set aside declaration of taking and to vacate and set aside ex parte judgment, to be filed. They have been lodged heretofore; let them be filed.

The Clerk: Yes.

The Court: The Court will take a recess until ten o'clock tomorrow morning. [380]

The Clerk: This is a motion to strike. This is the one argued by Mr. Weymann this morning. He gave it to me.

The Court: These are the originals. These are the ones I order filed, the originals of the supplement amendment to the motion to dismiss, and of the supplemental amendment to motion to set aside declaration of taking and to vacate and set aside ex parte judgment. Let those be filed. [381]

\* \* \* \* \*

Wednesday, February 24, 1954. 10:00 A.M.

\* \* \* \* \*

### EUGENE S. McKENDRY

resumed the stand as a witness on behalf of the defendants, [383] and having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination—(Continued)

Q. (By Mrs. Barnes): Mr. McKendry, did you carefully observe the three maps that were in court on September 9th?           A. I did.

(Testimony of Eugene S. McKendry.)

Q. Did any of those maps extend very far beyond the east side of Rogers Dry Lake?

A. No.

Q. Did the maps in court on September 9th have the word "enclosure" spelled with an "e"?

A. Yes.

Q. Have the present exhibits in court the word "enclosure" spelled with an "e"?

A. No.

Q. How is it spelled? A. With an "i."

Q. Did the original maps in court on September 9th show three paddles converging on the defendants' property? A. Yes.

Q. Were those three projected runways shown on the maps runways all in use? A. No.

Q. Were there any other paddles besides the three [384] paddles as referred to, the fans, on the maps that were in court on September 9th?

A. No, there were only three.

Q. In the present maps in court, how many runways do they show? A. Eight.

Q. How many paddles do they show?

A. Sixteen.

Q. On the original maps in court, did they show the towns of Mojave, Lancaster and Rosamond?

The Court: You have asked that. It is not.

Mrs. Barnes: That is correct, your Honor. It is not. [385]

\* \* \* \* \*

(Testimony of Eugene S. McKendry.)

Q. (By Mrs. Barnes): Mr. McKendry, on the original three maps in court, which showed nine little green dots on the lake bed and nine pink dots over the defendants' property, that had—what do you call it on the maps, the symbol——

The Court: Legend.

Mrs. Barnes: Yes.

Q. On September 9th, what did that call them?

A. On the enclosure and also in the transcript from Colonel Akers it was noted as crash pattern two different times.

The Court: Miss Schulke, will you read that answer?

(The answer was read.)

Q. (By Mrs. Barnes): On the maps that came in on October 27th what was the legend regarding these same dots?

The Court: Well, those maps are in evidence?

Mrs. Barnes: Yes. [387]

The Court: Then you may refer to the maps.

Mrs. Barnes: The maps that are in evidence, your Honor——

The Court: The maps speak for themselves. You do not need to question in regard to that. The maps are in evidence and they speak for themselves.

Mrs. Barnes: I don't have to ask?

The Court: No.

Mrs. Barnes: Very well.

Q. Mr. McKendry, do you recall a conversation that took place between yourself and myself



(Testimony of Eugene S. McKendry.)

and Mr. Weymann in his office regarding these maps in court on September 9th?

The Court: When did that occur?

Mrs. Barnes: About——

The Witness: Approximately four to five days after the hearing on September 9th.

Q. (By Mrs. Barnes): Do you remember that conversation?           A. I do.

Q. Will you please repeat the substance of that conversation?

A. You asked Mr. Weymann if he would stipulate to have the same maps back at the October 22nd hearing, and he said no, we would never see those maps again. [388]

\* \* \* \* \*

Mrs. Barnes: Here is another publication, your Honor, which is the specifications for the back fill of the mud mines of Edwards Air Force Base, and relates to them and gives the dates and is a public document put out by the Engineers. They are here, the maps and specifications of the entire project. And the three things this shows are: that the mud mines are still in operation, will be in operation un-September 24th of this year, that the buildings will not be removed until January 1955.

Mr. Weymann: May I interrupt at this point?

The Court: Let her make her offer, and then you may object.

Mrs. Barnes: That the completion of this bid is called for approximately June 1955.

The Court: Have you finished?

Mrs. Barnes: Yes.

The Court: You may make your statement.

Mr. Weymann: Now, I move to strike out the statements [394] made by the defendant here with respect to the Mojave mud mine. This matter was gone into yesterday. The Court ruled on it, and sustained plaintiff's objection to the materiality of it. This is not a matter which has anything to do with the defendants' property. The matter was gone into yesterday and the Court rejected it.

The Court: No, I think the Court received some testimony in regard to the mud mine.

Mr. Weymann: That there were bids received on it?

The Court: In any event, it may be marked for identification as Mrs. Barnes' exhibit next in order.

The Clerk: The first will be Exhibit 12, and this will be exhibit 13, both for identification.

The Court: For identification, yes.

The Clerk: Yes.

(The document referred to was marked as Defendants' Exhibit No. 13, for identification.)

Mrs. Barnes: This is part of the same document, Mr. Eiland. They go together. That is the specifications in the book, and these are the maps. Those go with the book.

The Court: You offer all those maps?

Mrs. Barnes: If your Honor does not want me to offer the maps. They really do not do any good, except that is the way it comes from the government. I might be wrong in presenting only a part when this whole thing is given by [395] the Engi-

neers. This has the whole maps of the mud mines. Might as well put it in, it might be handy around the court.

The Court: Let it be marked Defendants' Exhibit 14 for identification; that is those maps that are in the big roll on the clerk's desk.

(The maps referred to were marked as Defendants' Exhibit No. 14 for identification.)

\* \* \* \* \*

Mrs. Barnes: I would like to make a motion all exhibits marked for identification be taken into evidence so I may not miss them and be able to refer to them should this case go to appeal.

Mr. Weymann: That is objected to. It is entirely indefinite. What exhibits?

Mrs. Barnes: I would be glad to enumerate the exhibits.

The Court: There are not very many. You may do that, if you wish.

Mrs. Barnes: That will take a little time. [397]

The Court: You may do it right now.

Mrs. Barnes: We already have in evidence the joint exhibits, which are the maps.

The Court: Just those not in evidence.

Mrs. Barnes: Not in evidence.

The Court: Marked for identification.

Mrs. Barnes: I want—these are noted.

The Court: I will tell you, you may do that at a later time. You make a note of each one that is marked for identification only, and then present it at a later time.

Mrs. Barnes: There are only eleven exhibits

altogether, including the last I put in — fourteen, and I would like to move 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 be taken in.

The Court: Aren't any of those in evidence?

Mrs. Barnes: No, all you took was the government's maps, and you did take the transcript of October 9th, the day that we were talking about the maps. You took that transcript I offered into evidence.

The Court: What number is that?

Mrs. Barnes: Number 5.

The Court: Then you want 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in?

Mrs. Barnes: Yes.

The Clerk: 2, 3 and 4 are in. [398]

Mrs. Barnes: Those are joint exhibits. So it is 1, 6, 7, 8, 9, 10, 11, 12, 13 and 14.

The Court: Well, the motion is denied. [399]

\* \* \* \* \*

### AUGUST WEYMANN

a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows: [412]

\* \* \* \* \*

### Cross Examination \* \* \* \* \*

The Court: Now, you offer the maps. Get the defendants' exhibits.

Mrs. Barnes: That would be Defendants' Exhibit 7, that is the Coast and Geodetic Survey map, and——

The Witness: May I ask, your Honor, if the defendant is through with the cross examination?

(Testimony of August Weymann.)

The Court: No, she is now contemplating asking the Court to reconsider the offer of the maps.

Q. (By Mrs. Barnes): Can you see this map, or would you like to look at it closer? I mean, it is very small print here.

A. I think that was the map that you offered in evidence at a previous hearing.

The Court: What is that marking on it, Mrs. Barnes?

Mrs. Barnes: Which mark?

The Court: The number.

Mrs. Barnes: It is marked, for identification, it is Exhibit No. 7.

The Court: I recall the map, but I don't remember testimony. [418]

Mrs. Barnes: There were several testimonies, which I would like to argue on the map, your Honor, because it is quite interesting, but right now Mr. Weymann has given a reason for taking exception to this map business.

The Court: The Court wants to consider the offer. I have forgotten the testimony which identified the map.

Mrs. Barnes: Colonel Miller testified to this map throughout his testimony.

The Court: Do you have the transcript at this point?

Mrs. Barnes: Yes, I do.

The Court: May I see it, please?

(Document handed to Court.)

The Court: Well, after the ruling of the Court

(Testimony of August Weymann.)

sustaining the objection many questions were asked the witness concerning the map. The Court will now set aside that ruling, and order that the map be received in evidence.

Mr. Weymann: Before the Court rules, I would like to make an objection, that it is improper cross examination of myself as a witness. I testified as to nothing regarding that map.

The Court: That is all right, Mr. Weymann.

(The map referred to, heretofore marked Defendants' Exhibit 7 for identification, was received in evidence.) [419]

\* \* \* \*

Wednesday, February 24, 1954, 2:30 p.m.

The Court: Mr. Eiland, may I see Exhibit 8 offered by Mrs. Barnes?

You may proceed, Mrs. Barnes. I think you were about to offer Exhibits 6 and 8, that were marked for identification. That includes the two maps.

Mrs. Barnes: It wasn't 8 I mentioned, your Honor. I mentioned 6. Now, I have in my case, the most important part of my case is the motion to set aside the declaration of taking, and in a way it is my weakest case, because I did not bring in appraisers or anything to try to prove value, but in the supplemental motion—

The Court: You make your offer in regard to what?

Mrs. Barnes: I would like to put in Exhibit 10.

The Court: No, I think it was 6.

Mrs. Barnes: I would like to have that in also.

The Court: Number 6 may go in. I have examined a copy of the transcript that has been presented to the Court by Miss Schulke, and there were several pages of examination prior to the Court's order that it be marked for identification; and it may be received in evidence.

(The document heretofore marked Defendants' Exhibit No. 6 for identification, was received in evidence.)

Mrs. Barnes: Now, Number 9 are pictures of the [434] defendants' property, and there is a prima facie showing there.

The Court: May I see those, Mr. Eiland?

Mrs. Barnes: It is all those pictures, your Honor.

Mr. Weymann stipulated that they were pictures of the defendants' property, and I, in one of the depositions, had the man that took them testify, but because it was stipulated I did not waste our time bringing that in.

The Court: These are the pictures?

Mrs. Barnes: That shows the defendants' property, and I need it very badly.

The Court: What is the number of it? What exhibit is it?

Mrs. Barnes: It is Exhibit 9 for identification, your Honor. It was towards——

The Court: I will find it. Let me see those pictures again. (Examining.)

Mrs. Barnes, what were you about to say regarding this offer?

Mrs. Barnes: That I am trying to establish a

prima facie case, that the estimation of the estimated compensation was not made in good faith, and I am trying to show visually and through the figures that \$205,000 could not possibly be enough to reestablish one's self in the manner that is there on the place, or in other words even begin to. And I think the pictures are necessary, especially if I should have to appeal, your Honor, because I have very little to [435] show in the declaration of taking, the motion to set aside.

The Court: The Court will take under consideration this offer.

It seems to me the question of value should not be considered at this time, but the Court will consider your offer.

Mr. Weymann: May my objection to the offer be noted at this time, because I do not believe the issue is before the Court.

The Court: You said, "I will stipulate that these are pictures of the defendants' property, but I will not stipulate that they may be received at this time, because that goes entirely to the question of value, and this is neither the time nor place to determine that."

Mr. Weymann: That is correct.

The Court: That is your objection, and the offer has been made, and the Court will rule upon it at a later time. [436]

\* \* \* \* \*

Mrs. Barnes: Another thing, regarding the same declaration of taking, there is a document, identification No. 10, exhibit for identification, which is



a deed, which shows 240 acres, part of which is located within three-quarters of a mile of the defendants' property, and all within a mile and a half of the defendants' property. This 240 acres, it was testified to in court, your Honor, was barren desert land, but the government paid \$593,500 for that land, and that deed is of record, and we have a photostat here as an exhibit. And yet they only offered \$205,000 for 360 acres of land, which was very, very highly improved. Now, I feel that is a discrimination and showing of bad faith, where they go out and pay——

The Court: What number exhibit is that?

Mrs. Barnes: That is 10 for identification. I think it is very important, because this part of my case, I think, is the most important of all.

The Court: Well, the Court will likewise consider this offer to have it introduced in evidence.

Mrs. Barnes: If it will help any, I don't know about such things legally, but if it will help I also brought that into the supplemental amendment that was accepted by your Honor yesterday, as a supplemental amendment to the original motion to set aside the declaration of taking, and it is [439] mentioned of record in that motion, so that it would tie in. And I think it is quite necessary, your Honor.

The other thing that I think that we should have on view is the public documents of the Engineers' office in allowing the bid specifications. That comes in this motion to dismiss the case, where it shows

that the bids will not be completed until June nineteen——

The Court: Wait just a second until I get that. What reference is that?

Mrs. Barnes: That is identification Exhibit 13, for identification. It is the bids, the specifications for the mud mines. In other words, it was testified in front of your Honor, at your Honor's request to know about those mud mines, because they are relatively the same distance on the other end of the runway, they are also in the center of the mud lake runway, and the government tried to say they needed my place because I should not be there at the same time that these other things were. These show the bids, they are not going to come in until March 18th, and it shows in the bids, it says so right in them, that the mud mines are still operating and will operate until September 1954, that the buildings and plants, and so forth, of the Mojave Clay Corporation will not be removed until January 1955.

The Court: Well, you made that statement before. The [440] Court will consider that motion.

Mrs. Barnes: Yes, your Honor. Can we have the identification number 13 accepted in evidence?

The Court: The Court will consider that offer.

Mrs. Barnes: Thank you, your Honor. [441]

\* \* \* \* \*

Thursday, February 25, 1954. 10:30 a.m.

\* \* \* \* \* [445]

The Court: At this point it occurred to the Court there were certain motions made by Mr.

Weymann as to the depositions, and those motions are all denied. They may be received in evidence.

Mrs. Barnes: The whole thing?

The Court: The depositions of Mr. Koch, Mr. Hodges, and the others that were received.

There was a motion to strike them all, and the motion is denied. [459]

\* \* \* \* \*

[Endorsed]: Filed April 13, 1954.

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Fresno, California, June 16, 1955. 10:30 a.m.

Honorable Gilbert H. Jertberg, Judge presiding.

Appearances: For the Plaintiff: Laughlin E. Waters, United States Attorney, by Joseph F. McPherson, Assistant United States Attorney. For the Defendants: Pancho Barnes, In pro per.

\* \* \* \* \*

Miss Barnes: May I please see the document for which you personally were subpoenaed?

Mr. McPherson: In order to help and shorten the Court's time, I have prepared, or had Mr. Lavine prepare from the file, an affidavit identifying the photostatic copies which are attached thereto, of all of the documents which appear in the Lands Division file, bearing upon the declaration of taking and the manner in which it was filed in this proceeding, and I now hand your Honor the original of Mr. Lavine's affidavit, with the 14 docu-

ments attached to it, and I have given Miss Barnes a copy of it.

For the record, one of the documents which came to us as an enclosure is itself a photostat and did not print very legibly there, and if it is agreeable, I will be very happy to have your reporter transcribe it from our file. It is legible in our file, but it did not make a very legible photostat.

Miss Barnes: Which one is that? [54]

Mr. McPherson: It is the second document, the one attached to the District Engineer's letter of April 8, 1952, the letter to the Division Engineer signed by W. R. Shuler, which bears date December 4, 1952. The copy in my file is itself a photostat and it did not reproduce with clarity. [55]

\* \* \* \* \*

WILLIAM M. CURRAN, JR.

called as a witness in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: William M. Curran, Jr.

The Clerk: Have that seat there.

Miss Barnes: Your Honor, I would like to especially call your attention to dates. In other words, the chronological order of dates in review to documents is important.

Mr. Eiland, will you produce the original of the declaration of taking in the file?

Thank you very much. [58]

(Testimony of William M. Curran, Jr.)

Direct Examination

Q. (By Miss Barnes): Mr. Curran, you have there, I believe, a telegram you were showing me a moment ago?

The Court: May I find out, coming new into the case, who Mr. Curran is?

Miss Barnes: Oh, pardon me, your Honor.

The Court: What his qualifications are.

Miss Barnes: Mr. Curran, will you state your name?

The Court: Would you please stand over there so the witness will speak up and we can all hear him?

The Witness: William M. Curran, Jr.

Q. (By Miss Barnes): And Mr. Curran, who are you employed by?

A. Corps of Engineers, U. S. Army, at Los Angeles.

Q. Are you an attorney? A. I am.

Q. Do you do legal work for the Corps of Engineers? A. I do.

Q. Do you as a rule prepare legal papers for the Corps of Engineers? A. I do.

Q. Do you on occasion make upon the declaration of taking in land cases for the Corps of Engineers? A. I do. [59]

Miss Barnes: Is there anything further, your Honor, you would like to know about the witness?

The Court: How long have you been employed, Mr. Curran?

The Witness: Approximately eleven years.

(Testimony of William M. Curran, Jr.)

Miss Barnes: Where is the telegram? Mr. McPherson, have you seen this exhibit?

Mr. McPherson: No, I have not seen the exhibits you subpoenaed from Mr. Curran. This is No. 6, bearing cancellation stamp December 1, 1952, is that the one you refer to?

Miss Barnes: Now, your Honor, some of those figures there are a little unintelligible to me because it is coded, you know—not necessarily a code, but I mean they have certain code initials, but if you would wish an explanation of them more clearly for what you don't understand would you ask Mr. Curran?

The Court: Well, I would prefer to have the witness read the telegram into the record.

Would you read the telegram into the record, and then such explanation, if there are code letters used, as to make the telegram intelligible to the average person?

The Witness: This is a teletype received from the South Pacific Division Engineer at San Francisco to the District Engineer, Los Angeles. From SPDR 0719 message

“Chief of Engineers ENGLP 2336 dated 28 November 1952.

Quote Reference your letter 7 November 52 concerning [60] Pancho Barnes McKendry property, Edwards Air Force Base, California. If option cannot be obtained submit condemnation with declaration of taking unquote.”

(Testimony of William M. Curran, Jr.)

Q. (By Miss Barnes): What was the date of that? The date of the wire?

The Court: I have November 20, 1952.

Miss Barnes: December 2nd.

The Witness: The date it was received, your Honor, was December 1, 1952.

Mr. McPherson: That is quoting the chief's wire, the November date.

The Witness: Yes.

Miss Barnes: December 1, 1952. Is that the correct date?

The Witness: That is the date it was received in Los Angeles.

Miss Barnes: In Los Angeles?

The Witness: Yes.

The Court: In view of the fact that the telegram has been read into the record is it necessary to have it as an exhibit in this case?

Miss Barnes: It might be, your Honor, because this case might go to appeal to the Ninth Circuit, and I believe, I am not quite clear about all these things, but I believe if in the extreme case that your Honor should not grant the [61] defendants' motion, then this case should go to condemnation trial, it might not be necessary to bring up these motions again at the time of the condemnation trial. Maybe your Honor can answer that question, and the appeal could be as from these other motions, which I made once and the appeals court said were premature at the time but they could be made later. Now, this particular case now could

(Testimony of William M. Curran, Jr.)

go to the appeals court, is that right, your Honor?

The Court: Well, I wouldn't want to advise you on the law concerning procedure.

Miss Barnes: Well, it seems unnecessary to keep going through these various motions.

The Court: The Court has indicated that certain other appeals that you did take were premature, as I understand it, and some of the problems that you raised on the appeal could be reviewed in an appeal from the final judgment.

Miss Barnes: Therefore, I do think we need these exhibits in the record.

The Court: I want to ask Mr. Curran, do you have copies of those documents?

The Witness: This is our file copy, your Honor.

The Court: That is your file copy. You have no other copy?

The Witness: There would be no other copy. It is nearly 18 months later and all of the machine copies would [62] be destroyed by this time. They are only retained six months.

Miss Barnes: Your Honor, can I make the suggestion that it is quite all right that photostats or proper certified copies be made of these records and returned to the Engineers' file, but I would like to have this particular one in the evidence.

The Court: Well, what would be the number of this exhibit, Mr. Eiland? Do we start a new series of numbers?

The Clerk: I believe that would be the best way



(Testimony of William M. Curran, Jr.)

to keep track of them, to start a new series of numbers on this hearing.

The Court: This telegram will be received and marked Defendants' Exhibit A for this hearing of these motions. And if you can substitute true copies of the telegram, then this one might be removed and returned to you.

(The document referred to was marked as Defendants' Exhibit A, and was received in evidence.)

The Witness: All right.

Miss Barnes: Now, your Honor, these various dates are going to come up from time to time, but I wish to bring in the declaration of taking now. This is the original.

Q. Mr. Curran, did you make that particular paper?

A. Yes, up to the point of the changes and insertions that were made.

Q. Did you make any changes on that paper?

A. I did not. [63]

Q. When you made that original paper, can you see what it would have read? Would it have been 1710.73 acres of land? A. I think so.

Q. In other words, that particular case is the same description as the case entitled 1201-ND, is that correct to the best of your knowledge?

A. Yes. As far as I know; that is my recollection.

The Court: It is difficult for me to hear the witness and that is particularly true when——

(Testimony of William M. Curran, Jr.)

Miss Barnes: Your Honor, I know it is hard, but I am looking at the paper too. I know it by heart, I shouldn't have to look at it.

The Court: Will you read that question?

(The question was read.)

The Witness: Yes, as far as I know the title of the action shown on this declaration of taking is the same as that shown on 1201-ND.

Q. (By Miss Barnes): Mr. Curran, do you know who made the changes on that paper?

A. I do not know.

Q. It was made after it left the Engineers?

A. Yes.

Q. After it left your office? [64]

A. Yes.

Q. Now, Mr. Curran, will you observe in the right hand upper corner of that paper, the markings? Will you read them? A. WMC/VE.

Q. And the date?

A. Date of 11-24-52, November 24, 1952.

Q. Yes. Now, this declaration of taking then was dictated by you to the secretary?

A. It was.

Q. And what was your secretary's name?

A. Venice Eason.

Q. Is she still your secretary? A. She is.

Q. Now, observing the second page, do you see any x-es on there? A. Yes, on line 17.

Q. Do you also see on line 17 the words "part of the lands described"? A. I do.

Q. Would you think that applies to the subject

(Testimony of William M. Curran, Jr.)

property of the defendants, as you know it?

A. I don't know. I don't understand that question.

Q. Well, I don't think it is necessary that I get that particular point from you. Do you happen to be conversant with these tract numbers in these tracts? [65]

A. I am.

Q. Do you know whether they total 360 acres, more or less? A. Yes, they do.

Q. Well, in Schedule A then, with a totaling of the tracts this document where it makes the remark "part of the lands" would actually not apply to the document, would it?

Mr. McPherson: That is argumentative, your Honor.

The Court: Yes, I think it is argumentative.

Miss Barnes: Well, I am asking him if——

The Court: Well, I will overrule the objection, but I think the question is argumentative, but if you can answer the question, Mr. Curran, do so.

Mr. Curran: It calls for an opinion, your Honor. It appears to be bad English or inept phrasing.

Q. (By Miss Barnes): Now, Mr. Curran, I understood you to say that you usually made up these declaration of taking papers to forward on through the channels? A. That is correct.

Q. In other words, you have made more than this, many others; is that correct? A. Yes.

Q. This paper here started off to be evidently a declaration of taking No. 2 in a civil case, the [66]

(Testimony of William M. Curran, Jr.)

number of which was 1201-ND. How many declarations of taking No. 2 have you made? Is that an ordinary way of making them?

A. Sometimes yes, and sometimes no.

Q. Can you name me a case in the Muroc area that has had a declaration of taking No. 2?

A. I don't recall offhand.

Q. Do you believe there were any?

A. I don't recall.

Miss Barnes: If you will pardon me a moment, I would like to consult with my co-defendant, your Honor.

The Court: Yes, indeed.

Miss Barnes: This is one thing Mr. McKendry called to my attention, had your Honor personally seen this copy, because it may be that the Judge's copy is not the same.

The Court: Well, the witness has been interrogated concerning decree on declaration of taking in 1253-ND, is that right?

Miss Barnes: Yes.

The Court: Then it states United States of America vs. 360 Acres of Land.

The Witness: No, your Honor, not the decree; the declaration of taking itself.

Miss Barnes: That is correct. That is the declaration of taking, not a decree, your Honor. That is the one.

The Court: Well, all right. Then the witness [67] has been examined by Mrs. Barnes on the declaration of taking in Civil No. 1253-ND.

(Testimony of William M. Curran, Jr.)

The Witness: Yes, your Honor.

The Court: And, now, as I understand your testimony were the changes that appear in the document made by you?

The Witness: They were not.

The Court: They were not. And you don't know who made them?

The Witness: I do not.

The Court: Or when they were made?

The Witness: After they left my office.

The Court: After they left your office.

Q. (By Miss Barnes): Now, Mr. Curran, did you ever send the declaration of taking back through channels? I am never quite sure of these various channels they go through. And was that ever sent back to you and they asked you to make it over?

A. Yes, on one or two occasions.

Q. In other words, if there was something wrong with one that you sent back, would the normal procedure be that those changes would be made by you in your office?

Mr. McPherson: That calls for a conclusion on a matter on which the witness is not shown to be qualified.

The Court: Well, I believe, Mrs. Barnes, he wouldn't be aware, as I understand it, of any [68] changes that may have been made and not returned to him.

Miss Barnes: The point that I am trying to make, your Honor, is that if they weren't satisfied

(Testimony of William M. Curran, Jr.)

with the declaration of taking as made by him in his job, that I understand they were sent back, as he has just so testified, in cases. Maybe not in every case, definitely certainly not in this case, but the usual manner of procedure. You see, we get so much of the usual manner of procedure from the government maybe I am falling into that line, but they say this is the way we do it. So if it were sent back to him in other cases, it is rather interesting if it were not sent back in this case.

The Court: Well, as I understood the testimony of the witness, he said there have been occasions on which documents which you prepared have been returned to you for change.

The Witness: Yes, sir.

Q. (By Miss Barnes): Was this document referred to you for change?

A. No, it was not.

Q. Now, you have read the telegram which was your authority for it?

The Court: You are talking about Exhibit A, Defendants' Exhibit A?

Miss Barnes: Yes.

Q. That was your authority in case a [69] condemnation—that is, negotiations couldn't be made, to submit a condemnation with declaration of taking; is that correct?      A. That is right.

Q. It is interesting to me, can you explain to me why this telegram is received by you at a later date when negotiations are still talked about than when you made, according to your testimony, the

(Testimony of William M. Curran, Jr.)

declaration of taking which is in the case? Do you understand the question, your Honor?

The Court: Well, I think I do. It seems to me that your question consists of statements and opinions and what-not,—

Miss Barnes: No, I asked him—

The Court: But what you want to know, if he knows why the declaration of taking is dated prior to the date of the telegram, Exhibit A.

Miss Barnes: Yes.

The Court: Is that true?

Miss Barnes: Yes.

The Court: Can you answer that question?

The Witness: I don't know just why. It could have been that we had an earlier telephone call to one of my superiors who instructed me to commence preparation of the declaration of taking, and the authority would come in later.

The Court: Has that happened?

The Witness: That has happened very often; [70] teletype transmission is somewhat slow.

Q. (By Miss Barnes): Now, Mr. Curran, as long as this telegram was quite explicit, which you have here, regarding the Pancho Barnes McKendry property, can you explain, and also this shifting of dates as a possible phone call, but the telegram itself being received after this declaration of taking was made which you sent out? Can you explain that situation?

The Court: Mrs. Barnes, I don't think that you

(Testimony of William M. Curran, Jr.)

should precede your questions with a long statement.

Miss Barnes: I don't think I should, your Honor, it is just my stupidity.

The Court: Well, I am not sure of that, but if you have a particular point in mind, I would prefer if you would ask the witness the question without any prefatory statement or argument.

Miss Barnes: I know.

The Court: All right. Can you boil down that statement into a simple question?

Q. (By Miss Barnes): As I see this telegram it is quite explicit regarding the Barnes McKendry property? Is that correct, Mr. Curran?

A. That is correct.

Q. And yet when you sent the declaration of [71] taking out, it had nothing to do with the Barnes McKendry property at all. [72]

\* \* \* \* \*

Q. Would you know, or would you not know, whether or not that declaration of taking was meant for the Pancho Barnes McKendry property?

A. It was intended and meant for the Pancho Barnes property, as I prepared it.

Q. That was your intention at the time you prepared it?           A. Yes.

Q. Now, can you show me anything else backing that up, or is there any correspondence that goes with it?

Mr. McPherson: That is vague, ambiguous and indefinite.



(Testimony of William M. Curran, Jr.)

The Witness: The first part of the question, your Honor, I can answer. The declaration of taking consists of the first three pages, the last of which was signed by the Secretary, and the accompanying schedules, Schedule A and Schedule B, the latter two specifically refer to and contain the description of the Barnes property. [74]

The Court: We will take a short recess at this time.

(A short recess was taken.)

Miss Barnes: Well, let's proceed with another paper. We have Public Law 165 which was the public law and the only—564, correction.

The Court: I think we can proceed, Mrs. Barnes.

Q. (By Mrs. Barnes): Mr. Curran, do you have a letter there from an authority for the subject property, for the matter of appraisal on condemnation? Anything relating to the subject property under Public Law 564?

A. I have the real estate directive which was received by our office.

Q. Is that the letter signed by General Colby Myers?

A. That is one of the attachments. What we received is a copy, a carbon copy of a letter signed by General Myers.

Miss Barnes: I think that these exhibits should be in the record, or read into the record, and I would like his Honor, the Judge to see these. It might be difficult for him to immediately get what I am driving at.

(Testimony of William M. Curran, Jr.)

The Witness: They commence 1, 2, 3, 4.

Miss Barnes: Your Honor, would you like to see these papers?

The Court: Well, I would be glad to look at them. Are they papers such as can be read into the record? [75]

Miss Barnes: Yes, I think they should be read into the record.

The Court: And they come from your file?

The Witness: They are in the official files in our office.

Q. (By Miss Barnes): Will you please, Mr. Curran, read this letter of April 29, 1952, signed by—this is the one signed by Mr. E. V. Huggins, Assistant Secretary of Air.

A. That is right.

The Witness: If I might interject, your Honor, there are available here today certified copies of the original signed letter.

The Court: Where are they?

The Witness: Mr. McPherson has those letters.

The Court: Do you have certified copies of the original letter to which the witness has referred?

Mr. McPherson: I have some here.

The Witness: I believe Colonel Wells has them.

Mr. McPherson: These are all the documents Miss Barnes subpoenaed.

The Witness: Mine are just carbon copies.

The Court: Well, it would be much better to get the photostat of the original documents.

(Mr. McPherson hands up papers.) [76]

(Testimony of William M. Curran, Jr.)

Miss Barnes: May I ask, are these all the same, these copies?

The Witness: No, there are two sets. There is one group that is a photostat of this one, and the other group a photostat of that.

Mr. McPherson: "This one" isn't going to be very intelligent in the record, unless you identify them.

Miss Barnes: Well, let's see what we are looking at first, Mr. McPherson, then we'll try to identify them.

The Court: Just a minute, Mrs. Barnes. You questioned the witness concerning a letter, I have forgotten the date of it.

Miss Barnes: April 29th.

The Court: Dated April 29th.

Miss Barnes: Signed by Mr. Huggins.

The Court: 1952.

Miss Barnes: Signed by Mr. Huggins.

The Court: All right. Now, have you a certified photostatic copy, Mr. Curran, of the original letter?

The Witness: I have.

The Court: All right.

Miss Barnes: These are just for free?

Mr. McPherson: Unless you say what "this" is——

Miss Barnes: I know.

Mr. McPherson: ——your answer isn't going to be intelligible. [77]

Miss Barnes: I am going to have to find out

(Testimony of William M. Curran, Jr.)

myself what I am looking at before I can certainly get—

The Court: Well, the witness testified that he has with him a photostatic certified copy of the original letter dated April 29, 1952, signed by E. V. Huggins. Now, is that the document you are talking about?

Miss Barnes: Yes, that is one of them.

The Court: All right. Let's get one at a time.

Miss Barnes: Now, you are going to see all these, your Honor, and if they are going to go into evidence I don't think it is necessary if they are in evidence that he read them into evidence, do you?

The Court: No, but let's get them marked.

Miss Barnes: Yes.

The Court: Get that letter marked as an exhibit.

Will you give it to the clerk and have it marked?

That one will be received in evidence, so if you will please hand it to the clerk, so we can get it marked and then you can examine the witness on it.

Miss Barnes: Can we use this one, it is the prettiest?

Mr. McPherson: I have no objection to the receipt of the photostat of the original letter of Mr. Huggins, dated April 29, 1952, with the attachments therein referred to, as certified on this document. [78] The Mr. Huggins who signed that letter is the same Mr. Huggins who signed the declaration of taking in this case, your Honor.

The Court: All right. Then that document with

(Testimony of William M. Curran, Jr.)

attachments will be received and marked Defendants' Exhibit B. So if you will mark it, Mr. Clerk.

(The document referred to was marked as Defendants' Exhibit B, and was received in evidence.)

Miss Barnes: Now, Mr. Curran——

The Court: Will you delay any question until we have it marked?

Do you wish to question the witness further concerning Defendants' Exhibit B?

Miss Barnes: Yes, we have got another one. We might as well get them in right now.

The Court: Do you have an extra copy of it, Mrs. Barnes?

The Witness: I do, yes, sir.

Miss Barnes: There is another exhibit on which I would like to question the witness.

The Court: Well, let's find out what document he has concerning which you wish to question him, and maybe we can get a photostatic copy of it for the record.

Miss Barnes: Yes. It is the letter of December 27, 1950, memorandum to the Assistant Secretary of the Air Force, signed by and from General Colby M. Myers.

The Court: Do you have in your possession a [79] copy of the document referred to by the witness?

The Witness: Yes, I do, your Honor.

The Court: Have you with you today a photostat certified copy?

(Testimony of William M. Curran, Jr.)

The Witness: I also have that.

The Court: Have you seen that, Mr. McPherson?

Mr. McPherson: Yes.

The Court: Do you want to offer that document in evidence, Mrs. Barnes?

Miss Barnes: Yes, with its appendages. Besides that letter there is another short letter dated January 10, 1951.

The Court: Is that an attachment to the other?

Miss Barnes: They have made it an attachment, and I imagine it goes together.

The Court: All right. Do you have any——

Miss Barnes: There is also a map here.

The Court: Well, that is attached to it, is it not?

Miss Barnes: Yes.

The Court: Do you have any objection?

Mr. McPherson: No objection.

The Court: All right. The certified photostatic copy of letter dated December 27, 1950, signed by General Myers, is it?

Miss Barnes: General Colby M. Myers.

The Court: Together with the attachments, maps [80] and other letters attached, are received in evidence and marked Exhibit No. C, Defendants' Exhibit C. You have a copy for Mr. McPherson and Mrs. Barnes.

(The documents referred to were marked as Defendants' Exhibit C, and were received in evidence.)

Mr. McPherson: I have a copy.

The Court: You have a copy?

(Testimony of William M. Curran, Jr.)

Mr. McKendry: Yes, your Honor.

The Court: Very well.

Miss Barnes: Have you seen the copy yet, your Honor?

The Court: I have seen B, and we are waiting for C.

Miss Barnes: You didn't bring a photostat for the Court of the one from Seybold?

The Witness: No, I did not. I have a copy.

Miss Barnes: May I see that a moment again?

I would like in the event that there is not a photostat here for the Court, that this particular letter be read into the record, and I think it should also be made an exhibit under the same conditions as the original directive was, the wire.

The Court: Have you seen the letter, Mr. McPherson?

Mr. McPherson: No, I have not.

The Court: Would you show the letter to Mr. McPherson?

Mr. McPherson: No objection to the letter of January 9, 1951, which has just been shown to me.

The Court: The letter is dated what, December?

Mr. McPherson: January 9, 1951.

Miss Barnes: January 19th.

The Court: And from whom is it?

Miss Barnes: The letter is from J. S. Seybold, Colonel, CE, Division Engineer. It is to the Engineers at San Francisco, I believe.

The Court: Well, now, Mr. Curran, could that

(Testimony of William M. Curran, Jr.)

letter be received in evidence, and be withdrawn upon the substitution of a true copy?

The Witness: Yes, your Honor. In fact, I don't know that it need be withdrawn. It is a typed copy.

The Court: Then that letter is received in evidence, dated January 19, 1951, from J. S. Seybold, marked Defendants' Exhibit D.

(The letter referred to was marked as Defendants' Exhibit D, and was received in evidence.)

Mr. McPherson: Actually I see no materiality to the letter. We do not object to it.

The Court: Yes. I haven't seen the letter, but will you have the clerk mark it.

Q. (By Miss Barnes): Mr. Curran, these are all official letters from the files of the District Corps of Engineers in Los Angeles?

A. That is correct. [82]

Mr. McPherson: You had two more subpoenaed?

Miss Barnes: I had?

Mr. McPherson: Yes.

Miss Barnes: Thank you very much, Mr. McPherson. Touche. Well, I thought they were incorporated mostly in those.

The Witness: I believe they are all in.

Miss Barnes: I believe, Mr. McPherson we have them; you see, they were combined in these exhibits.

The Court: In other words, the other documents that the witness has are attached as attachments to the exhibits which are in evidence?

The Witness: That is correct.



(Testimony of William M. Curran, Jr.)

The Court: Are you satisfied with that, Mrs. Barnes?

Miss Barnes: Yes, your Honor. I thought Joe was discovering something else for me. Made me real happy for a moment.

Your witness, Mr. McPherson.

### Cross Examination

Q. (By Mr. McPherson): Mr. Curran, you do not mean by your testimony to cast the inference that you or anyone in the office of the District Engineers in Los Angeles has any voice in or determination as to which property, if any, will be condemned for military use as United States bases?

A. No, in— [83]

Q. Did you perform any function—

The Court: I think the witness wishes to supplement his answer.

Mr. McPherson: Oh, I beg your pardon.

A. No, in the office of the District Engineer in Los Angeles upon direction we prepare declarations of taking in blank and submit them for recommendation through the South Pacific Division Engineer's office to the office of Chief of Engineers, where they may be changed, may be declined, or may go on up to the Secretary of the appropriate department for signature.

Q. (By Mr. McPherson): And the Secretary may or may not have them signed?

A. That is correct.

Q. You were asked whether there was any other

(Testimony of William M. Curran, Jr.)

identification of the property as being that of the Barnes McKendry land in the declaration of taking assembly which you prepared. Examine your file, sir, and see if you have a transmittal memorandum dated December 4, 1952, from your local office to the Division Engineer at San Francisco transmitting the assembly covering Tracts L-2040, 2043, 2071 and 2072.

A. That is the open file on the counsel table. I believe it is turned to that letter. [84]

Mr. McPherson: I should like to have marked for identification, or will offer directly in evidence the copy of the letter which I have just described, which transmits the declaration of taking assembly, identifies the property as that of Mrs. Barnes and McKendry interest, indicates the appraisal information which the government then had, indicates the failure to secure the option, the breakdown of the negotiations, and recommends the condemnation of the property.

The Court: Have you seen the letter, Mrs. Barnes?

Miss Barnes: No.

The Court: Will you examine it?

Miss Barnes: Mr. McKendry, would you like to examine it?

Mr. McPherson: It is one of the exhibits attached to Mr. Lavine's affidavit.

Miss Barnes: Do we have a copy of that?

Mr. McPherson: Yes, you do have.

Miss Barnes: I don't believe it is a legible copy.

(Testimony of William M. Curran, Jr.)

Mr. McPherson: That is the one I agreed to give them a copy, because it didn't reproduce. In our file that is all I have, is a photostat.

The Court: Would you identify the letter, Mr. Witness, as to date, and the signature?

The Witness: This is a letter 4 December 1952 to the Division Engineer, South Pacific Division, Corps of Engineers, U. S. Army, P. O. Box 3339, Rincon Annex, San Francisco 19, California, [85] the subject of which is Declaration of Taking No. 2 covering Tracts L-2040, L-2043, L-2071 and L-2072, Edwards Air Force Base, California.

The Court: Well, this letter then is received in evidence. Do you have any objection to the receipt of the letter in evidence?

Miss Barnes: No, your Honor.

The Court: All right, it is received as Government's Exhibit No. 1. And if you care to substitute a true copy your file copy may be withdrawn. Government's Exhibit No. 1.

(The document referred to was marked as Government's Exhibit No. 1, and was received in evidence.)

The Witness: For further identification, it is the letter of W. R. Shuler, Corps of Engineers.

The Court: There is also a copy, a photostatic copy of Government's Exhibit No. 1 attached to the affidavit of Mr. Lavine.

Mr. McPherson: Yes, but it is not a very legible copy.

Q. Now, Mr. Witness, I show you the Defend-

(Testimony of William M. Curran, Jr.)

ant's Exhibit D, and direct your attention to the language in the first paragraph thereof, relating to the directive, and the sentence reading, "The land acquired under this directive should be purchased strictly in accordance with the priority indicated therein." Does that have anything to do with the order in which land should be condemned instead of purchased? [86]

A. No, sir.

Miss Barnes: I object to that. You have just asked him and he has testified he had nothing to do with this, he just takes orders.

The Court: I think the objection should be overruled. It is a question of the priority of purchase or priority in condemnation, isn't it, Mr. McPherson?

Mr. McPherson: Yes, your Honor.

The Court: I think the objection should be overruled. Did the witness answer the question?

The Reporter: Yes, I have answer "no, sir."

Q. (By Mr. McPherson): You were asked this morning if you could recall any cases in which numbered declarations of taking other than No. 1 have been filed.

Miss Barnes: Muroc only.

Q. (By Mr. McPherson): How about other cases, other property?

A. Yes, in numerous projects I have prepared declarations with recommendations that same be accepted by the Secretary, as many as 50 in one

(Testimony of William M. Curran, Jr.)

case in the Southern District of California, Civil No. 9103.

Mr. McPherson: That is all.

The Court: I don't think the witness finished the answer. [87]

The Witness: That was in Lytle Creek and Home project, also in the Southern District, any number of declarations from 25 to 30 were prepared and filed in the same case.

The Court: That is all apparently, Mr. Curran.

Mr. McPherson: That is all, your Honor.

(Witness excused.) [88]

\* \* \* \* \*

### VEMBA M. GREENE

having been called as a witness in behalf of the defendants, and being first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Vemba M. Greene, G-r-e-e-n-e.

\* \* \* \* \*

### Direct Examination

Q. (By Miss Barnes): Mrs. Greene, when did you first go in business at Muroc?

A. I think it was in March of nineteen—well, I can't recall the year exactly, but was immediately after the 7th of December, when they made the attack on the Islands.

Q. In other words, you were already located in that country, is that correct? A. Yes.

The Court: You are talking about 1941, 1942, is that right?

(Testimony of Vemba M. Greene.)

Miss Barnes: 1941.

The Court: Pearl Harbor was December 7, 1941, and it was shortly after that that you went into business?

The Witness: We moved out there in January of 1942 then, and we opened up for business in the first part of March.

The Court: Of '42?

The Witness: Yes, sir.

The Court: All right.

Q. (By Miss Barnes): What business were you in there, Mrs. Greene? A. To begin with?

Q. Well, just state—what I am interested in also is what business you had, for instance, say in [93] 1949.

A. Well, when we first started out we had a small restaurant, that seated twelve people, we served sandwiches and coffee and soft drinks. And then as time went on we added to that and when the demands of the personnel at the Base demanded we served more food we did, and as time went on we added a trailer court and we added a service station and we added a package liquor store with the consent of the Base.

Q. When you say the consent of the Base, what did the Base have to do with whether you should or not have a package liquor store?

A. It was told to us the fact we were within 660 feet of the boundaries of the, at that time it was known as the Edwards Muroc Base, that it would be necessary for my husband myself to have

(Testimony of Vemba M. Greene.)

a letter signed by the Commanding Officer of the Base, requesting that the State of California grant us a license. We petitioned the Commanding Officer, and he furnished us the letter, and it is on file at Sacramento in the State Board of Equalization.

Q. You were thereupon granted a license, is that correct?      A. That is right. [94]

\* \* \* \* \*

Q. Can you remember, Mrs. Greene, what did the town of Muroc consist of in the years 1949 to '50?

Mr. McPherson: Objected to as irrevelant, incompetent and immaterial, not probative of any issue in this case. [101]

Miss Barnes: Well, we have papers, Mr. McPherson, that are filed before the Court. This witness is out of order but we do have papers that have a list of all that stuff and I want it from her, not from the government.

The Court: Well, I will overrule the objection. Do you understand the question, Mrs. Greene?

The Witness: Well, I think I do, but maybe it had better be repeated.

The Court: She wants to know what the town of Muroc consisted of, I think, in 1949 and '50, so would you state that?

A. Well, Mr. Anderson had a store at the original location, what they call the townsite of Muroc, and across the street from him was the depot, and he had a service station there, and he had several

(Testimony of Vemba M. Greene.)

units that he rented. '49, '50, and the County of Kern had leased the ground facing on the highway, of the Muroc highway that came off 466 into the base, and they had built a sufficient number of units to house about 750 people; there was a school house there across the street from that. Now, right at the corner of the road, at the school house, we were north, going back toward the highway, and we had 73 acres in that piece and we had a 30-unit trailer court, and we had five or six rentals, we had a restaurant, we had a super service station, and we had a liquor store. And up the road [102] further, across the track, going towards the base, a man by the name of Mr. Fitts had four apartments which he had constructed in there for rental, and I don't know the name of the gentleman in front of him but he had four apartments, and coming south just a little ways was a two-story house been there about 30 or 40 years, but in excellent condition, and they had about six or eight rentals in that, and one of the old time inhabitants there, who had been there for around 35 or 40 years by the name of Mertz, they had several rentals. In fact, there was 15 or 20 families that had bought property between the road that went to the base, at that time it would be the north gate, and across the railroad track before it was moved to where it is now, and I would say there was in the neighborhood of 55 or 60 families living in that area. I could go into more detail if you would like.



(Testimony of Vemba M. Greene.)

The Court: I think generally that gives the Court an idea of what the town consisted of.

Q. (By Miss Barnes): Did you mention the B. F. W. Club?

A. Yes. Well, no, I didn't mention it, but the B. F. W. clubhouse constructed on the edge of the lake, and then there was Mr. Pauley, he had rentals in there, and there were several more that had rentals. We all got our mail at the post office. [103]

Mr. McPherson: I move to strike the testimony of the witness concerning the structures and trailers in the old townsite of Muroc on the same grounds that were assigned in support of the objection to the question.

The Court: I will deny the motion.

Q. (By Miss Barnes): Now, Mrs. Greene, I would like to show you——

A. We had rentals but they were not right there.

Q. ——some newspaper advertisements.

The Court: What date is that issue?

Miss Barnes: What date?

The Court: Yes, approximately, '55, '54.

Miss Barnes: May 1955.

Q. Does that page relate to any spot you know?

Mr. McPherson: Object, if your Honor please, obviously public newspaper advertising in 1955 could not have anything to do with the legal right to condemn the defendants' property in 1953.

Miss Barnes: Discrimination. [104]

\* \* \* \* \*

(Testimony of Vemba M. Greene.)

The Court: In other words, you want to prove by this witness—

Miss Barnes: Two things. We are not only now proving discrimination. The first proof was what was Muroc when they said there was nothing there. The second point is that she was displaced, discriminated against, not allowed to go in business, her land was taken from her. She was pushed out eight miles; when she begged them to have a liquor store in they wouldn't let her down it, oh, no, couldn't have a liquor store on the government property, but these advertisements show they advertise a liquor store. She can testify there is one; I can take the stand and testify there is one, so can Miss Martin. She and I were in one last Sunday together, which was open on Sunday incidentally, which was all right with me. But what we are trying to prove here is that they scream security and [107] then they are advertising. My husband wants me to read this. There is, of course, a further reason.

The Court: You are reading from the transcript?

Miss Barnes: Transcript in this same case, September 9, 1953, page 24, line 8, Mr. Weymann:

“There is, of course, the further reason and that is for reasons of security. These are classified operations that are carried on in there and in order to protect the security of those operations the government should have possession of the property as soon as reasonably possible in order to prevent any leakage from these premises. There is here a motel,

(Testimony of Vemba M. Greene.)

for example, on these premises and people come in and go out there, and that is the thing we seek to put an end to.

“The Court: Well, has that condition existed all the time?”

“Mr. Weymann: That is correct, but there is no reason why it should continue any longer than is necessary.”

There is more of this later in the transcript.

I would like these in the record, your Honor. I will ask they be marked for identification otherwise, but I think this covers a very definite point in the case. They are screaming security, and yet they run these advertisements, and [108] this is run in all the papers.

The Court: Well, those newspapers may be marked for identification as Defendants' Exhibit E.

Miss Barnes: Your Honor, I could have brought in hundreds of them.

The Court: Will you have the clerk mark your document for identification?

(The newspapers referred to were marked as Defendants' Exhibit E for identification.)

\* \* \* \* \*

Miss Barnes: I won't push you too far, your Honor; you have been very nice.

Q. I believe, Mrs. Greene, that you left out the clothing store and a couple of other gas stations.

A. I am sorry, I did.

The Court: They were there in 1949 and '50?

(Testimony of Vemba M. Greene.)

The Witness: Well, the clothing store was in a building rented by us.

Q. (By Miss Barnes): And I believe Mr. Levine's restaurant was there in 1949?

A. Well, that is true, but I included that in that housing, and the welfare club, and there was a service station down the street.

Q. And there was also a snack bar?

A. Yes. There were three restaurants operating there at one time, outside the base.

Miss Barnes: I can't remember whether we got in evidence, or whether there was an objection, as to what the town of Edwards now consists of.

Mr. McPherson: We object—

Miss Barnes: They object, and was it sustained?

The Court: Yes, that was sustained.

Q. (By Miss Barnes): Do you know of any of the old timers that had like [110] businesses that now exist in the town of Edwards, that have operations in Edwards?

Mr. McPherson: That is incompetent, immaterial and irrelevant.

The Court: I will overrule the objection. Are any of the old timers who did business in Muroc who are now doing business at Edwards?

The Witness: We were promised the opportunity.

Mr. McPherson: I move to strike that answer as not responsive. You can answer yes or no.

The Witness: There is not.

(Testimony of Vemba M. Greene.)

Q. (By Miss Barnes): Were you ever promised you could operate there?

Mr. McPherson: We object, your Honor.

The Court: I think the objection is sustained. The fact is the witness testified that none of the old timers are engaging in business in Edwards.

Miss Barnes: That means, of course, the old timers whose land were taken in one form or another by the government.

The Witness: I understand.

Miss Barnes: Your witness. [111]

\* \* \* \* \*

### PANCHO BARNES

a witness in her own behalf, having been first duly sworn, testified as follows:

The Witness: In the first place, I would like his Honor to take an overall view of the territory.

The Court: That map has been introduced in evidence?

Miss Barnes: It is already in before, in the motion, as Exhibit 7.

The Court: As Exhibit 7?

Miss Barnes: As Exhibit 7.

The Court: Is that the government's or plaintiffs' exhibit?

Miss Barnes: That is the defendants' Exhibit 7.

The Court: Does the Clerk have it marked?

The Clerk: Yes, it is marked on the corner. Yes, that is Defendants' Exhibit 7, introduced at the hearing in February 1954.

(Testimony of Pancho Barnes.)

The Court: Do you have a pointer there the witness might use?

Miss Barnes: Mr. Curran, could I ask you to please come hold this side for me?

Your Honor, I don't know how well you can see this. [120]

Direct Examination

The Court: I was just wondering, Mr. McKendry and Mr. Curran, if you will hold the map over here. Mr. McPherson, you gentlemen may place yourselves so you can see the map too.

Mr. McPherson: Very good, sir.

The Court: Mrs. Barnes, you have been sworn, have you?

Miss Barnes: Yes, your Honor, and I am testifying now.

The Court: All right.

Miss Barnes: This map——

Mr. McPherson: That was 7 in the previous hearing. What is it in this case?

The Court: Well, do you want to re-introduce it as an exhibit in this hearing?

Miss Barnes: Is that proper?

The Court: I think so.

Mr. McPherson: It will be Defendants' F.

The Court: F is the next number in this hearing, and so please refer to it as Defendants' Exhibit F in this hearing.

(The map referred to was marked as Defendants' Exhibit F, and was received in evidence.)

(Testimony of Pancho Barnes.)

The Witness: This is a scale map, your Honor. Now the government in the first hearing of September 9, 1953, came into court with a map which showed the east line of the base here, the line here, the east line of the dry lake, and showed the west line of the base over here, approximately [121] here (indicating).

The Court: "Over here" would mean nothing in the record.

The Witness: Well, we will say over close to the west line of the Rosamond Dry Lake, and the transcript will show that Mr. Weymann, the attorney for the government, did say to the court that the defendants' property was in the very center of the Edwards Air Force Base.

The Court: Now, that is rectangular, almost?

The Witness: 360 acres.

The Court: 360 acres, that is outlined in blue.

The Witness: Yes, the runways of the air base are outlined in green.

The Court: Oh, yes, I see.

The Witness: This is the airport proper here, actually it ran down into the edge of the property, the east 80 of the property was where the concentration of most of the buildings were, and alfalfa, 180 acres of alfalfa in this area (indicating), and the rest was either airport or desert grazing land. In other words, it was fenced and had considerable crops from time to time throughout the various years. This at the time we were in court was the proposed new runway.

(Testimony of Pancho Barnes.)

The Court: That's the green coming off of the Muroc Lake?

The Witness: Yes, over the old base, the old air base which is shown in detail on these maps, which is a United [122] States government map. Now, that was at that time under construction, and has since, I believe, been completed. Am I right, Colonel Akers, is that runway completed?

Colonel Akers: Yes.

The Witness: Now, the air base consisted before mostly of this land project, this later taking; in other words, that we are in. The air base edge ran, I believe this line, Mr. McKendry, can you see? This is the west line of the base.

The Court: Can you designate that line some way for the record?

The Witness: Well, it would be approximately two miles. You see, these squares are each a section, and a section is approximately a mile. Two miles east of the subject property, there is a road, and to the east of that road, county road, there is the air base fence, and that fence is still the same.

The air base itself has the same west boundary to all intents and purposes. This land is open to the public still, as far as going on it is concerned. Now, up in here, in these sections—

The Court: Well, that would be kind of north-easterly?

The Witness: We will say it is some mile or so in a northwesterly direction from the present newly completed runway, is the Wherry Housing. That



(Testimony of Pancho Barnes.)

has grown considerably. It is extending all about here. (Indicating.) [123]

Now, this is a sort of a topograph map I am showing you of the base, and I am going to get to more detail on the Wherry Housing and the shopping area.

Now, this would be the west line of the base as it was before the property was taken by the government, and the east line of the base extended to here, approximately.

The Court: Clear over to the east end of the map?

The Witness: Clear over to the east end of the map. I believe Highway 395 is the boundary there, is that correct?

Mr. McKendry: In part.

The Witness: Well, it extends almost, or in part to Highway 395, which is the main highway which runs down from Bishop, which runs through back roads to Escondido. Of course, these marks, so your Honor will know what they are, they contended this was the very center of the air base.

The Court: They contended the subject property was?

The Witness: Yes, and these marks were showing what the center was of the air base, when they were contending that this was the very center.

The Court: Well, that is a cross in green, is it?

The Witness: Yes.

The Court: Above which is marked "Center of Proposed A F B property"?

(Testimony of Pancho Barnes.)

The Witness: Yes. And also that was testified to by [124] Colonel Miller of A.D.C. So the center of the proposed Air Force property would be about the center.

The Court: That is the expansion?

The Witness: Yes.

The Court: Would be about that cross in the approximate center of Muroc Lake?

The Witness: Yes. Now, your Honor, they went to a great deal—that is, the government went to a great deal of trouble to show the subject property was being flown over, and why they would need the subject property on account of the flight of the airplanes, and their map of the area showed a great many of these patterns. I took one of the runways from their map, that is, taken from the Air Force map that they put in evidence.

The Court: That is the runway at the northwesterly part of Muroc Lake?

The Witness: Yes, extending it showed they were flying with those paddles directly over the Wherry Housing. At the time Colonel Akers made a statement that they were ground runs, they couldn't fly in this direction. That will be found in Judge Beaumont's decision, they couldn't fly on the southwesterly side.

In checking that, I did this from the maps, I found they were centered more over the housing. Of course, it has been explained since this was made. [125]

We had a railroad across the base, which you

(Testimony of Pancho Barnes.)

have heard a great deal about. This is the line then on the map, extending across the lake in a north-easterly direction. The railroad has since been relocated to where it extends towards the top of the map, or even off the map. I think the railroad line is continued from here. This was in Public Law 564, Congress recognized the necessity for the use of this particular lake, and the recommendation was that the railroad should be moved, and that land should be acquired to relocate it and the relocation of it should be paid for.

The Congressional Record of the hearing we referred to that brought on the law, Public Law 564, under which the property was condemned, had to do entirely with this area.

The Court: The Muroc Lake area.

The Witness: Not only the Muroc Lake area but the town of Muroc itself, which was right in here. They wanted that, and the reason that they said they wanted it—it is in the Congressional Record—was to keep encroachment from coming in on the base itself. Now, that was all that Public Law 564 had.

In Public Law 155, of the 82nd Congress, I haven't studied that law, your Honor, but we do have a copy which is in the documents you received today, which said these mud mines, which were located up here on this lake, will [126] be moved over to the Buckhorn Lake area, which is in here. The property that Miss Martin was talking about was, I believe, right next to this property.

(Testimony of Pancho Barnes.)

The Court: Well, that Buckhorn area as you describe it is the brown portion east of Rosamond?

The Witness: Well, mostly the brown portion, but the area between the two dry lakes.

The Court: All right.

The Witness: This is Buckhorn Lake area. In fact, Buckhorn itself is right up in here, the Buckhorn Springs, and they refer to this Buckhorn Lake. The subject property is actually close to the Buckhorn Springs, but they are named from Buckhorn Lake.

This would be the Muroc township area up in here.

Now, even as late as the 82nd Congress, it is proposed to move the mud mines from the lake here to the Buckhorn Lake area, meaning in this area here. That is what it says in the bill. This, of course, was never done.

That is one question I wanted to ask Miss Martin, but she is not here, but there has been no mud mine moved, and yet it was very specifically the one thing that the Congress were very anxious about. They said was there anything in the proposal that would mean cessation of the mud mines, and General Myers stated they would move the operation to the lake to the southwest. The only lake to the southwest [127] is the Buckhorn Lake area, and incidentally the mud here is good mud. The Rosamond Lake, I don't believe, is suitable for rotary mud. It contains very much more salt on this lake.

(Testimony of Pancho Barnes.)

I have driven across here, I delivered milk to the Air Force base for 12 years and the old camp used to be situated over in this area.

The Court: You are talking about Muroc Lake now?

The Witness: Yes.

The Court: That would be east of the lake?

The Witness: On the east side of the lake, and when I delivered milk to them, even though there were a foot of water on the lake—we used to have wet years—I have seen this lake many times completely inundated. However, we used to be able to drive our truck across the lake even though it was full of water if we kept on the route. If there was so much as the space of a line off you are stuck immediately.

The Court: You were talking about Rosamond?

The Witness: Yes. Some of this is quite good land to land on. I have landed there many times. I have landed on these little lakes, but this lake wouldn't be fit for test aircraft to land.

The Court: Well, you are again talking about Rosamond Lake? [128]

The Witness: Rosamond Lake. Now, Muroc Lake itself, which is the technical name, it is known as Rogers Dry Lake, that lake is always pretty good, and it has an entirely different substance of clay. I can tell you why, but I don't think it is necessary. But this lake is a very fine safety factor for test aircraft. They can come in from any direction, any way, if they are in trouble. I

(Testimony of Pancho Barnes.)

have known pilots with trouble testing airplanes far west of the town of Lancaster to come back there in two minutes. In fact, George Welch, who was killed very recently was very close to the town of Lancaster. They don't seem to be able to test over the Air Base. He bailed out, unfortunately unsuccessfully, his engine fell out on Lake Hughes, which is way off the map. In other words, it is important and I would be the first to say that lake is important to the testing of aircraft, and it should be added, and the moving of the railroad is an additional safety factor, because a lot of tracks, or the mud mine pits would be a hazard.

And everything I know about Public Law 564 as explained to Congress was quite right and quite in keeping with proper and working plans for testing of airplanes at Muroc, even getting the town of Muroc itself and moving the people out, because it would have been pretty close. They have moved a lot of the old places, and rebuilt over [129] into this town.

Now, their boundary now, I think the road has been moved, there has been this road around the lake, and the new road comes over here.

The Court: Well, the new road is slightly west of the old road.

The Witness: Yes, slightly west, and opens onto Highway 466.

The Court: Mrs. Barnes, where is Edwards?

The Witness: The town of Edwards?

The Court: Yes.

(Testimony of Pancho Barnes.)

Mr. McPherson: Do you mean, Judge, the railway station or the shopping center?

The Court: I mean the shopping center?

The Witness: The shopping center is in this general location, and is about—you see these squares are a mile, these are sections. It's a mile or two miles, as the crow flies, from the new runway.

Mr. McPherson: How far is it from the railroad station?

The Court: I would like to know.

The Witness: Well, the railroad station doesn't mean anything. The railroad station would be up—instead of placing the railroad across, it has been rebuilt and it crosses across the top of the map here somewhere.

The Court: So the railroad station would be near the top of the map, and approximately directly north of what you call the Wherry Housing?

Mr. McPherson: About eight miles, I think.

The Witness: Well, it is very close to this road just east of the old road. I think the old road goes right by the station.

Mr. McKendry: Your Honor,—

The Court: Well, now, I think we can't have two witnesses, one sworn and one unsworn.

The Witness: My husband drives that every day, and he says the station is on the old road, that came back into the old road, and the underpass there at the station would be at the top, at the north.

(Testimony of Pancho Barnes.)

The Court: It is kind of north and east of the Wherry Housing.

The Witness: Well, it would be six or eight miles.

The Court: Yes.

The Witness: Depending. It is a little more than six miles, because we are running opposite, diagonally. It is a little over, your Honor, probably eight miles by road.

The subject property,—and this is taken from the Air Force map, we did this from their own maps, the Air Force property is approximately two miles, just the other side of the road, which is just two miles east of the subject property. The runway, as you see here, your Honor, is more [131] than three miles. We are again cutting diagonally, I think it is about three, I know it is quite a little over a mile, your Honor. And consequently we are well over three miles, that is the edge of the subject property to the edge of the new runway.

Now, there have been a lot of statistics, your Honor, about the distances from runways, and there are a great many runways operating in the country, and they are using the dry lake over the public road here, we have the Mojave Air Base is flying, the edge of their runway is within a question of feet of Highway 46, which is now four lane—it is getting to be all four lane. And there is no military reason why, no matter how many paddles they may draw, which they will show you on their maps, which is merely confusing for just because they put a paddle doesn't mean it is used by the aircraft.



(Testimony of Pancho Barnes.)

I went to the Wherry Housing, to the beauty shop, to get my hair fixed over there, and when I was driving down the road—and incidentally these are all county roads, this road is a county road, maintained by the county, and the various roads that the government has built in, I don't know whether they have all been deeded to the county yet, but I believe it was the plan to deed them. This road has always been a county road and is still maintained by the county, and is a heavily traveled road, because a [132] great many of the people that work in that area travel this road, to come to their own homes, ranches, in Lancaster, and there was another road cut in here. The old road that the property was on, the paved road to Rosamond, which was our road, which was the main county road, continued down here and joins up here for a mile and then two miles more to the road. The government has brought a more direct road from the Wherry Housing down, which has cut off this road to the subject property. This road and this road here are both owned and maintained by the county, and paid for by the county, that is, the maintenance by the county taxpayers of Kern County, of which I am one.

The Wherry Housing has a peculiar setup whereby the people that own the Wherry Housing do not pay the county taxes, but the renters of the houses do have the taxes of those houses, personal property taxes on the houses, or whatever they call it, attached along with the rent and they are paying Kern County taxes.

(Testimony of Pancho Barnes.)

We have a school there, in fact, I think there are two schools, an elementary school and a high school, and those are maintained by the county, paid for by the county, by Kern County taxpayers. The public library, which is growing very fast, and is maintained by Kern County taxpayers.

Now, on this same map we have a center, a shopping center which is highly publicized, and is open to the public [133] and it consists of everything that was in the small town of Muroc before and possibly some things have been added. When I say that, they have a large market, I mean a pretty nice looking sort of super-market type of thing, and they have a beauty shop, barber shop, lunch room and they have a liquor store, and there are projected plans—this is hearsay, I am not sure about it—

Mr. McPherson: Then I suggest you not say it, if it is hearsay.

The Witness: —there will be a cocktail bar and lounge.

Anyway the town has been moved here, and the public is invited to come in here from all around, and this base is all open. It isn't as if it were closed off or fenced off. It is not. [134]

\* \* \* \* \*

The Witness: In other words, this is the important lake, I can tell you that, I have been there a great many years, I flew over it myself. I tested aircraft over there in 1948. It is perfect, and they

(Testimony of Pancho Barnes.)

needed it, and they needed to move the railroad, and they very likely needed this land in here.

You can see relatively over the period of the distances how far the subject property is and is outside the fence.

Now, there is another thing, I would like to overlay on this map a very tiny map to show the Judge what I mean also in regard to the rest of the property before we argue about the Congressional record; also that the Wherry Housing is not only a housing—now, one thing I don't know, your Honor, whether the housing, and I did read all the Congressional records on it, but I found nothing in the housing which went into super-markets, barber shops, baby stores, and various types of stores. I found nothing that gave to the Wherry Housing any right to put in a town community, it had nothing except housing, and that is why I don't know, your Honor, oftentimes there are facilities needed such as [138] commissary, but there are other places available, such as Mrs. Greene's place up the highway here where groceries and stuff are obtainable, and liquor store and where stores should be, but they have brought them into the air base area.

Now, if you visualize this—they will show you their map, your Honor, which is prettier than mine, though mine is bigger—the edge of the proposed air base which they claim now to own, I think comes about to this line, isn't it, Mac? Wait a minute, right in this area.

The Court: Well, it is west.

(Testimony of Pancho Barnes.)

The Witness: West of—

The Court: Rosamond Lake?

The Witness: West of Rosamond Lake. It is approximately two miles east of the Highway at Rosamond, I guess, the town of Rosamond.

Well, I believe maybe we had better read that while the map is open, so his Honor can see it better. Do you want to get that?

The Court: You may want to put that map down and rest a little bit.

The Witness: I am reading from the second session of the 81st Congress, regarding the acquisition of land at Muroc Air Force Base, California.

“Mr. Sheppard: We will take up the next item, the ‘Muroc Air Force Base, Calif.’ where I see [139] that you are making a request for \$3,800,000.

“General Myers: Muroc is, of course, the large base for our experimental aircraft, developmental aircraft. You all know that we have a large lake there, a dry lake, that lends itself to this type of work so that these airplanes can land on it. It is 15 miles long and some 6 miles wide. We need a lot of land there, and that is one item we have in here for the base expansion.”

Should I read it all, your Honor?

The Court: Well, you read such portions as you feel are material.

The Witness: Well, they are simply discussing the price of land, at \$34 an acre.

The Court: You want to omit that?

(Testimony of Pancho Barnes.)

The Witness: Well, it is a little bit, I should have just read that. It says:

“Mr. Sheppard: Does the \$34 per acre include some of the mining locations that you are going to have to take over?”

“General Myers: It includes those mud-mining operations, and we have worked out an arrangement with them whereby we can acquire their properties and they can move over to a new location. [140]

“Mr. Sheppard: In other words, there is nothing in this proposal directly or indirectly that is going to cause the cessation of that operation?”

“General Myers: It will cause the stopping of the operation on the lake itself, but they will move over to another lake to the southwest.

“Mr. Sheppard: But they will have available the material necessary for the economy of the oil operation. They are presently supplying that material.

“General Myers: That is right.

“Mr. Sheppard: You are not cutting that off?”

“General Myers: No, sir.

“Mr. Sheppard: And it will not impair the operations of the oil industry?”

“General Myers: That is right. I have the papers here with me.

“Mr. Sheppard: If you say it is so, you do not need to bring out the papers.”

Then he goes on to say it has been a disturbing situation.

Now, I think we will skip that as not being any-

(Testimony of Pancho Barnes.)

thing that I am particularly interested in pertaining to the case. Getting down to the question of the cost of the land: [141]

“Mr. Wigglesworth: How much land do you propose to buy?

“General Myers: 80,500 acres at about \$32.40 per acre, based on the over-all appraisals the engineers have made in the area.

“Mr. Sheppard: Regarding the cost of the acreage, does that figure cover the across-the-board percentage? You recognize the fact that there will be high and low spots?

“General Myers: That is right. The mud mining operations will be more expensive.

“Mr. Sheppard: That is what is shoving up the price on the average. The land itself is very definitely desert. I would say that the cost of the land is that high because of the mud mining operation.

“General Myers: That is right.

“Mr. Sikes: For what purpose do you propose to buy the 80,500 acres?

“General Myers: We have to acquire the land on this lake, or part of the land on the lake. We have to put a runway in there eventually, and we have to relocate the railroad that runs right across the lake. We have to acquire the land for that, and then we are acquiring the land in the vicinity [142] to prevent encroachment on the base area.

“Mr. Wigglesworth: What will the total acreage be?

(Testimony of Pancho Barnes.)

“General Myers: 139,000 acres, plus the acres we have now.”

Then they talk about how many acres they have now and the two generals don't agree on just how many acres they have now.

The Court: Well, your point is that the subject property is not within the vicinity?

Miss Barnes: The subject property is not described in any way.

The Court: No, your point is it is not within the vicinity?

Miss Barnes: Oh, definitely, your Honor.

Well, there is a little more he thinks I should read.

“Mr. Wigglesworth: You are going to increase it by 50 per cent?”

“General Myers: I have a map here that shows”—now this is the map, I think that Mr. McPherson was referring to, not the one he thought they might have showed him, but I don't think they even saw it, Mr. McPherson. It doesn't sound as if they looked at it from the testimony. He simply said he had it.

“I have a map here that shows the existing [143] reservation, 156,560 acres. Proposed acquisition 139,000 acres.

“Mr. Wigglesworth: I thought you said 85,000 acres.

“General Myers: The total additional land we require is 139,000 acres. In this estimate we are able to procure 80,000 of that.

“General Spivey: This is just a portion of that.

(Testimony of Pancho Barnes.)

“Mr. Sheppard: Some of this acreage in there is already government property, and there will be a transfer from one department to another.”

I think that is all that pertains to the case. There is very little more. [144]

\* \* \* \* \*

Friday, June 17, 1955. 9:30 O’Clock A.M.

\* \* \* \* \*

### PANCHO BARNES

having been previously duly sworn, resumed the stand and testified further as follows:

#### Direct Examination—(Continued)

The Witness: I want to go back to the map, your Honor, because I have an overlay I wanted to show. I am sorry about the big map, but the size gives you a chance to see the detail.

Mr. Curran, would you mind being a map-holder again with Mr. McKendry?

We will try to go over this real quick. [149]

The Court: You take your time.

The Witness: Your Honor, just as a point of interest, coming back again to my statements, and I am still under oath, your Honor, I am testifying.

The Court: Yes.

The Witness: That there was a town of Muroc. We have on this map considerable detail as to what was there. We have the Air Base here, the buildings for it.

The Court: Now you are referring again to Defendants’ Exhibit No. F in this proceeding?



(Testimony of Pancho Barnes.)

The Witness: Yes, your Honor. And on this map it does show the Air Base in quite detail as it was at the date of this map which was—this is 1947, your Honor, that part. I have pasted the maps together in order to make the big map, because this is a Geodetic Survey, I think they call it, and they are very accurate maps. Now we have the Air Base as it was when they made this map in 1947, and the runway in 1947, and also they have considerable detail as to the town that was there in 1947. Now there are just little dots for the buildings, but I would like your Honor to scrutinize the outline of that town, because in 1949 Congress was told that there was no town.

Would you move it up real close so his Honor can see the detail of *these* little town. Have you got your magnifying glass there? [150]

The Court: Well, let the record show that I have examined the detail concerning the town of Muroc as it was in 1947.

The Witness: Does your Honor observe the buildings there noted on the map?

The Court: Yes.

The Witness: In considerable amount?

The Court: Well, the amount that is indicated on the map.

The Witness: Now, we have a big map here, your Honor, that is now before the Court. I have a little map I want to introduce into evidence, and it is so small a map that I can hardly figure it out myself, knowing the territory as well as I do. This

(Testimony of Pancho Barnes.)

little map—can we have a number for it, your Honor?

The Court: Well, do you have any objection, Mr. McPherson?

Mr. McPherson: I have never seen the map.

Miss Barnes: Oh, I am sorry.

Mr. McPherson: I would object to the map if the rider which is stenciled is included as part of the exhibit since it purports to be a directive from some committee, that calls itself the Air Coordinating Committee, meeting in Washington, D. C. under date of February 18, 1955. I don't know when the map was made or what it purports to depict as to time, and in the absence of some supporting [151] detail or some authenticity of the entries made on it, I don't see how it could be material to any issue before the Court.

The Court: It seems to me that the appendix that is attached to the map—

Miss Barnes: It is part of the map, your Honor.

The Court: Well, it isn't part of the map.

Miss Barnes: No.

The Court: It seems to me that it is completely hearsay and would not be admissible.

Miss Barnes: It is sent out to pilots. It is a document by which the Air Base lives, it is their authority and that we should stay out of certain territory with our airplanes, and it is sent out by the California Aeronautics Commission in Sacramento, and circulated as the law, as far as I am

(Testimony of Pancho Barnes.)

concerned, as a pilot, and as far as my husband is concerned as a pilot.

The Court: Well, I don't think that any proper foundation has been laid for the appendix, or whatever it is, that is attached to the map. I think there should be some indication the date the map represents.

Miss Barnes: It is entitled, "Owens Valley Restricted Area (see map opposite page)" and it is sent out and circulated to us pilots who fly our aircraft in that vicinity to stay out of certain places.

Mr. McPherson: As of what date? [152]

Miss Barnes: As of February 18, 1955.

Now, if we can ignore this map in court we should be able to ignore in our aircraft.

The Court: I don't think it is a similar situation.

Miss Barnes: To us it is, your Honor, because I want to show you something that is quite interesting and startling, your Honor, and it is part of my case.

The Court: I think you ought to be able to furnish some foundation before the Court receives the map. Does the map depict conditions as they existed in 105, '51, '52?

Miss Barnes: No, the conditions as they exist today. This case is going on right now.

The Court: And the appendix or appendage to the map is apparently issued by some agency of the State of California?

Miss Barnes: Because of—

(Testimony of Pancho Barnes.)

The Court: Is that right?

Miss Barnes: It stems from the Air Force, from the military services, from Washington. It has to do with what I am showing you, your Honor.

Mr. McPherson: May I examine the witness on voir dire?

The Court: Yes.

Mr. McPherson: Is it not true the map which you proffer was taken from a publication to which you are a subscriber or to which you are entitled to receive copies?

The Witness: No, your Honor. [153]

Mr. McPherson: And when you received the map as you proffer it, was the rider which is stenciled to the map dated February 18, 1955 a part of it?

The Witness: Yes, it was.

Mr. McPherson: It was received in this condition?

The Witness: Yes.

Mr. McPherson: Then my objection, your Honor, goes not to the authority or the support for the map but to the fact it relates to a condition existing the 15th of February 1955, as depicted by the Air Coordinating Committee meeting in Washington, D. C. and could not be binding upon the government in this case, and is not probative of any issue before your Honor.

Miss Barnes: It isn't a question of whether it is binding or not, your Honor, it simply means this, and I will explain the situation to you, and then

(Testimony of Pancho Barnes.)

you can make up your mind whether or not it should go in the evidence. But the situation, your Honor, is this, this little map, your Honor, in relation to this big map, the big map as you see is practically all of the Edwards Air Force Base, and the proposed part of the Edwards Air Force Base. That is the original base which is on this side of this line, including the Rogers Dry Lake, and the proposed and partly condemned and properly condemned, and the condemned unnecessary property—— [154]

Mr. McPherson: We ask the statement be deleted.

The Court: Well, I think that the statement it is unnecessary should be deleted.

Mr. McPherson: And I ask that she testify and not argue.

The Witness: All right. Anyway, we have the fence of the original Edwards Air Force Base on this side, and this takes in the territory which they propose to take in their condemnation.

Now, this little map shows in this little spot here at the bottom of the restricted area, as noted on the map, the part of this map——

The Court: Of the big map?

The Witness: Of the big map, Exhibit F, it shows that which is actually fenced and which is actually Air Base. The little map——

Mr. McPherson: We object to that, your Honor. It is an air navy map.

Miss Barnes: What do you mean?

(Testimony of Pancho Barnes.)

The Court: Just a minute, Mrs. Barnes. The small map will be marked for identification Defendants' Exhibit G for identification, and the Court will not receive it in evidence on the ground that no proper foundation has been laid for the receipt of the map, but you may have it marked Defendants' Exhibit No. G for identification.

So if you will have the clerk mark the map for identification. [155]

The Clerk: Also the appendix?

The Court: Yes, mark the whole for identification.

(The document referred to was marked as Defendants' Exhibit G for identification.)

Miss Barnes: On that particular map, your Honor, I want to make an offer of proof.

The Court: All right.

Miss Barnes: My offer of proof is this, your Honor, we are pilots, your Honor, both of us. We have our aircraft, we have our airfield which is here marked on the map. We both have been flying for many, many years, my husband something more than 20 and I some 28 now, I believe, and my son, who is another defendant in this case is also a pilot and flies in this area.

The government, the Air Force has not been satisfied with the taking of this territory. All they intend to do, as far as this is concerned probably, is fly over it.

Mr. McPherson: Object, if your Honor please, the witness obviously could not describe the *intend*

(Testimony of Pancho Barnes.)

of the Secretary of the Air Force or the committees of the government which controls our military operations.

Miss Barnes: Well, that was testified to under oath.

The Court: As I understand it, this is an offer of proof on your part. [156]

Miss Barnes: This is an offer of proof, in which I say that they weren't satisfied with buying this gigantic territory and flying in it—

The Court: Well,—

Miss Barnes: They have got to fly, your Honor, everywhere else in that country and exclude private aviation. In other words, what I am trying to bring to your mind is this, that suppose there is an alfalfa ranch in this area anywhere here, O.K., that is their particular property. We will say there is an alfalfa ranch next to it, that is not within the delegation, it is not meant for condemnation, they aren't going to condemn it, but they have a sort of inverse condemnation, and a lot of those people are going to find it out too down there, wherein they have stopped them flying. They have come and stopped them crop-dusting their crops in the little airplanes where they have got aphids in their alfalfa, and they have stopped that because they say no flying anywhere.

The Court: Well, Mrs. Barnes,—

Miss Barnes: For a territory I don't know how many times this big, but many hundred times this big.

(Testimony of Pancho Barnes.)

The Court: Well, Mrs. Barnes, this is not the proper time for argument.

Miss Barnes: I am not arguing, your Honor, I am making an offer of proof. [157]

The Court: Confine yourself to what you expect to prove in your offer of proof in connection with the small map which is the Defendants' Exhibit G for identification. Simply state what you expect to prove.

Miss Barnes: I expect to prove, your Honor, that the lands that they have taken from myself and other people in my neighborhood and outside of the original boundaries of the base have been taken to use to fly over, and I have testimony, your Honor, previous to this that they had no use, it was in Judge Beaumont's decision, to actually use it other than to fly over.

Now, they are not satisfied with taking that land away from us and putting us out of business, saying that they need that land or that land is necessary, but they have gone out and blanketed maybe one hundred times this much property to fly over and restricted the rest of us pilots and civilian pilots and the land owners, if they want crop dusting or want to fly an airplane into their own ranch and land, and there were several little landing strips within the various ranches. They are not satisfied to take all this away and put us out and then be satisfied to keep their airplanes in there, they have got to blanket a hundred times this much to fly in, and say we can't fly in it either.



(Testimony of Pancho Barnes.)

The Court: Well, in other words, what you are [158] offering to prove in connection with the small map is that it might tend to indicate that the subject property is not needed for public purposes, is that right?

Miss Barnes: Especially, your Honor.

The Court: All right.

Miss Barnes: Another thing, your Honor,—

The Court: Well, now, is that in connection with your offer of proof?

Miss Barnes: Yes.

The Court: Well, the offer of proof is rejected.

Miss Barnes: It is rejected?

The Court: Yes. It is in the record, but I do not think it is proper to be received by the Court in this proceeding.

Miss Barnes: Your Honor, they not only don't contain themselves to the Air Base for their testing, which was proved previously in this case, but they avoid flying their dangerous equipment around this particular proposition and air base and land which they have taken. They took it for a purpose for which they are not using it.

Your Honor, I live thirty miles north from here—

The Court: That is from the subject property?

The Witness: From the subject property, up in a secluded place and I am hearing more supersonic bombers than previously. I have an old rock [159] house over a hundred years old, and they have nearly knocked it down. It is built with rocks

(Testimony of Pancho Barnes.)

and mud but the walls are three feet wide or more, and they are coming up and flying there, testing over the property on which I am now living. Here is a portion——

The Court: Did you show that document to Mr. McPherson?

Miss Barnes: I would like it in.

The Court: That document will be marked Defendants' Exhibit No. H for identification.

(The document referred to was marked as Defendants' Exhibit H, for identification.)

Mr. McPherson: We object to its introduction, as irrelevant, incompetent and immaterial.

Miss Barnes: I think it is very relevant, your Honor, when they take property for the purpose of testing and then don't use it for testing, but go other places and test.

The Court: May I see this document?

Miss Barnes: Yes. This was pinned up on my ranch and the other ranches in my area, where I am now living. That was a bomb with a war head, they lost it; it was dangerous.

The Court: This Defendants' Exhibit H for identification, being a printed warning of a lost rocket is not received in evidence, but will remain marked for identification.

The Witness: Now, I am going to try to get [160] rid of this map, your Honor, but there are just a couple of fast points: The town of Muroc is here, the old Air Base is here, the mud mines were in this area some eight miles distant from the

(Testimony of Pancho Barnes.)

town of Muroc. The subject property was some more than eight miles from the town of Muroc, way down here.

The Court: I think we reviewed that pretty well yesterday.

The Witness: Well, I want the picture in your mind, your Honor. Then I want you to note especially, this was not drawn in by me, I have merely colored in the drawings on the map, and the airport, which is a fine large airport, commercial airport, was marked on the Geodetic Survey map.

The Court: On the subject property.

The Witness: On the subject property, the airport was marked on there, and at the time of the Congressional hearings was licensed by the United States Government, and by the State, the Department of Commerce.

I have here, your Honor,—

The Court: That is a commercial airport?

The Witness: As more than a commercial airport. Barnes Airport, Muroc, California, with the following ratings: a primary flying school, commercial flying school, flight instructor's school, basic ground school, advanced ground school. The date of this is May 22, 1950. This is licensed by the Department of Commerce, Civil Aeronautics [161] Administration, United States of America, Air Agency Certificate. In other words,—

The Court: Well, let's don't argue the case now; you are testifying.

The Witness: O.K. Now, this deposition here,

(Testimony of Pancho Barnes.)

your Honor, was in evidence before Judge Beaumont. It has these various certificates in it. Here is the airport permit under the State of California.

The Court: Whose deposition is that?

The Witness: That is E. S. McKendry's, Eugene S. McKendry's deposition. I would like to put it in the case. It was in evidence. It is in evidence. What I really want is the photostat of the licenses.

Mr. McPherson: We have no objection to the photostats of the licenses, but I think it is improper to receive Mr. McKendry's deposition when he is standing about a foot and a half from the witness at the moment.

The Witness: He wasn't when he made it.

Mr. McPherson: We make no objection to the licenses that were outstanding issued either by the State of California or the federal government.

The Witness: The federal government and the State.

Mr. McPherson: It would seem they go more to a matter of value than a right to condemn.

The Witness: No. We are just—— [162]

The Court: Well, let's——

The Witness: ——discussing one point. At the moment——

The Court: Well, just a moment.

The Witness: ——the last two photostats are what I am referring to.

The Court: All right. There is attached to the deposition of Eugene S. McKendry, filed in this court on December 18, 1953, photostatic copy of

(Testimony of Pancho Barnes.)

airport permit issued by the State of California under date of September 30, 1949, covering airport owned by Florence Lowe Barnes and operated by F. L. Barnes, at longitude 117-57-30, latitude 34-52-00, which I assume is the subject property.

Now, that permit is received in evidence and marked Defendants' Exhibit No. I, and——

The Witness: Just a minute.

The Court: Just a minute.

The Witness: Your Honor, will we put the big map away?

The Court: Yes.

The Witness: It will rattle for a minute.

The Court: All right. You go ahead.

And then attached to the same deposition is a photostatic copy of Air Agency Certificate No. 7145, issued by the United States of America, Department of Commerce, Civil Aeronautics Administration, issued to Bakersfield Airpark, whose business address is Barnes Airport, Muroc, California, [163] and the certificate covers the following ratings: primary flying school, commercial flying school, flight instructor's school, basic ground school, advanced ground school. The certificate was issued May 22, 1950.

Mr. McPherson: Is that school at Bakersfield?

The Witness: On the subject property, Mr. McPherson.

The Court: It says issued to Bakersfield Air Park, is that what you call it?

The Witness: No, that particular license was is-

(Testimony of Pancho Barnes.)

sued to Bakersfield Air Park because they moved their operation of their flight training on the GI Bill of Rights to the subject airport, because our airport, my airport was licensed and had these ratings and licenses and this work was going on, and it was just a question that I used to operate my own flying school back before the war, and it was just more than I could handle, so I leased out the flying rights and had an operator on the field.

The Court: Is it your statement, Mrs. Barnes, that this certificate which I have described covers the airport and air activities of the subject property?

The Witness: That is absolutely right. That subject property had to be licensed before they could get the—the operators who operated that field could get the GI bill of rights program.

The Court: Well, under the statement of [164] Mrs. Barnes this photostatic copy is received in evidence and marked Defendants' Exhibit J.

(The documents referred to were marked as Defendants' Exhibits I and J, and were received in evidence.)

The Witness: I wish to point out in my testimony, your Honor, that there was a flight school, a GI bill of rights government flight school in operation with the proper licenses, which was licensed by the government as well as the State, at the very time that the Congressional hearings were taking place in Congress. It was a government agency and was well known as existing by the government.

(Testimony of Pancho Barnes.)

The air field showed on all of the Air Force maps and they were perfectly cognizant of it. There was no one within the Air Force, at a higher level, that wasn't quite cognizant of the fact that that airport was there and operating.

Mr. McPherson: That is pure conjecture.

The Witness: Well, let's say in the higher flying circles; in other words, maybe some of the non-flying Air Force officers might not know.

The Court: All right, have you further testimony by yourself, Mrs. Barnes? I am simply talking about you as a witness now. [165]

\* \* \* \* \*

Miss Barnes: I will offer them together, the two photostatic copies relating to the purchase of land of the first and of the second sessions of the 81st Congress.

The Court: Do you have any objection?

Mr. McPherson: No objection, your Honor. I wonder if I could have a copy. Do you have an extra copy?

Miss Barnes: These are the only copies we have. I think we can get copies.

Mr. McPherson: The only reason I ask, I have what purports to be a copy of the hearings of both the Appropriations and Armed Services Committees of the first and second session, and some of the pages Miss Barnes showed me are not in the copy furnished me, and I need those. I make no objection based on her statement that they are copies of the hearing.

(Testimony of Pancho Barnes.)

The Court: May I see them?

Miss Barnes: I have the photostat of the front pages of at least one book, I don't know if I have got both books.

The Court: The photostatic copy of—

Miss Barnes: I have here a cover, just to give the setup of the book, of the first session, because I got it with some other justification, and so forth, but they were justifications that Mr. McPherson has quoted but they didn't go through. [173]

\* \* \* \* \*

The Court: Now, how about the other photostat?

There is received in evidence what appears to be photostatic copy of hearings before the Committee on Armed Services, House of Representatives, 81st Congress, First Session, on HR 4766, consisting of pages 3350, 3354, 55, 56, 57 and 58, and the document is received in evidence and marked Defendants' Exhibit No.—what is the number?

The Clerk: It was the same one we had before, wasn't it? The last two I put up there were K.

The Court: Which two?

Miss Barnes: Can't we have these under one exhibit, your Honor?

The Court: No. No. [176]

The Clerk: These two were offered before this last testimony.

The Court: Were introduced as Exhibit K?

The Clerk: They were, but I don't have them down, and I don't know which ones they were.

The Court: Well, here is—



(Testimony of Pancho Barnes.)

Miss Barnes: Well, we have this map for identification——

The Court: Just a minute.

The Clerk: No, we passed that.

Mr. McPherson: The little map was G.

The Court: Well, this document that I have described is Defendants' Exhibit No. K.

(The document referred to was marked as Defendants' Exhibit K, and was received in evidence.)

Miss Barnes: This one, your Honor, is the one where it says—I have the map here—this is the second session. This is the one that counts. This is the one from which the public law came. General Myers says “I have a map here that shows the existing reservation of 156,560 acres. Proposed acquisition 139,000.”

The Court: The Court will read them, Mrs. Barnes.

Miss Barnes: No, but Mr. McPherson has just said something I don't want to stick in your mind, your Honor.

The Court: Well, it is not——

Miss Barnes: “I thought you said 85,000. [177]

“General Myers: The total additional land we require is 139,000 acres. In this estimate we are able to procure 80,000 of that.”

And it was 80,000 that they made there their law.

The Court: This other document is received in evidence and marked Defendants' Exhibit No. L, photostatic copy consisting of what purports to be

(Testimony of Pancho Barnes.)

a Congressional hearing, consisting of pages 176, 177 and 178.

(The document referred to was marked as Defendants' Exhibit L, and was received in evidence.)

The Witness: Your Honor, you have seen a map with the Barnes airport, the large map of the Geodetic Survey, Exhibit F, I believe for the defendants, which showed an airport on the map, a large airport on the map. You have seen the air agency and the state permits for the airport with their various ratings. I want to testify that the same airport was noted, identified and shown on the world aeronautical charts, which charts are flown by all over the world.

Mr. McPherson, do you want to look at this map?

The Court: Do you seek to introduce the map in evidence, or are you satisfied with your statement that the airport does appear on the charts?

The Witness: I think it should be in evidence because the visual thing is far more convincing than to say it, your Honor.

Mr. McPherson: I was trying to find the date on this map. [178]

The Witness: Oh, it should be on the front here somewhere. September 10, 1953.

Mr. McPherson: No objection to the introduction of that map on the witness' statement concerning what it shows, except relating to the rating. I don't know that that appears on there except by interpretation.

(Testimony of Pancho Barnes.)

The Witness: No, I didn't say that, I said he had seen the others.

Mr. McPherson: The map is shown on World Aeronautical Chart, Mojave Desert, segment 404, issued September 10, 1953.

The Court: All right, the map is received in evidence then, since there is no objection, as Defendants' Exhibit M.

(The map referred to was received in evidence and marked as Defendants' Exhibit M.)

The Witness: The Barnes Airport was on the Aeronautical World Chart, which are government publications, for many, many years. The airport itself, I don't remember just when it got on the map, but the airport existed there on the ranch back as early as 1933. The field was known throughout the flying world, and when I say that I mean not just nationally, but internationally.

The hotel at the subject property was the finest in the Antelope Valley, and a very complete plant, which has been fully described, from a prima facie [179] standpoint, in the defendant's affidavit on file in this court. I don't think it is necessary, your Honor, for me to take time to reiterate my own affidavit, is it?

The Court: No, I think not. [180]

\* \* \* \* \*

Friday, June 17, 1955. 1:30 O'Clock P.M.

\* \* \* \* \*

The Court: There is a photostatic copy of a letter from the Corps of Engineers, U. S. Army,

(Testimony of Pancho Barnes.)

Los Angeles District, dated September 3, 1953, directed to Miss Pancho Barnes, Rancho Oro Verde, P. O. Box 37, Muroc, California, signed by Arthur H. Frye, Jr., Colonel, Corps of Engineers, District Engineer. The document is——

Mr. McPherson: P for identification.

The Court: ——marked as Defendants' Exhibit P for identification.

Now, the clerk had to step out to attend to some business in the clerk's office, so it will be marked as soon as the clerk comes back.

I might state that the letter which I have described, the photostatic copy is attached to the deposition of Eugene S. McKendry, filed in this court on December 18, 1953.

(The document referred to was marked as Defendants' Exhibit P, for identification.)

The Witness: That was taken into evidence, your Honor.

The Court: I beg your pardon?

The Witness: That entire thing was taken into evidence previously.

The Court: Yes.

The Witness: It was in the evidence itself.

Should I make an offer of proof on that?

The Court: Well, the letter pretty much speaks for itself, doesn't it?

The Witness: No, because by itself if one didn't realize the contents of it they would say, well, so she was refused a salvage offer, none was made up. It is as simple as that.

(Testimony of Pancho Barnes.)

The Court: Well, you state your offer of proof.

The Witness: Every other—I can't say that all appraisals always, but all the appraisals in that area included some salvage value when they were made——

Mr. McPherson: We object, may the Court please, the appraisals would be the best evidence, and I know that is not the fact, and there is no use getting into a hearsay tirade.

The Court: I think the appraisals themselves are the best evidence.

The Witness: The point was that I wasn't offered a salvage value, when everyone else that I [189] knew, and I knew everyone there, and I can state that under oath, that I know almost everyone and I know of no one who wasn't offered a salvage value, in that area.

The Court: And that is your offer of proof?

The Witness: Yes, and there was discrimination against me.

The Court: The Court will reject the offer of proof, but it is in the record.

The Witness: Now, your Honor, in the first day here in court on May 23rd, Mr. Joe McPherson did read some findings of the Honorable Judge Carter, in fact he spent a long time reading twenty odd findings, many of which were not pertinent to anything, but there are certain of those findings that I would like to read because the ones Mr. McPherson read were incorrect and had not been signed by the Judge.

(Testimony of Pancho Barnes.)

The Court: Were those the findings in the suit that you brought against General Holtoner?

The Witness: Against General Holtoner and Colonel Sacks.

The Court: The case which Judge Carter tried?

The Witness: Yes. Now, Mr. McPherson spent a long time here and much time that morning, and a large portion of what he read were not the findings from Judge Carter's case, and the ones that he read were only proposed findings and were not the ones signed by Judge Carter, and that is the only reason that I would like to now correct some [190] of the more pertinent findings. I don't intend to read them all, but there are three or four findings that were misstated by Mr. McPherson, and I would like to have them in the record in their correct form, being the ones actually signed by the Judge. [191]

\* \* \* \* \*

Mr. McPherson: Just one moment until I describe it.—A conformed copy of the findings of fact and conclusions of law, in case 15,403-C, which was filed and entered by Mr. Smith, the Clerk, the date is punched out. I will get the date of the signature. Signed by Judge Carter on the 22nd day of September, 1954, and the like conformed copy of the judgment entered in the same case, filed on September 23, 1954, signed by Judge Carter on the 22nd of September, 1954. (Handing to Miss Barnes.)

The Witness: From the witness stand, your Honor, I state that these are the findings that were

(Testimony of Pancho Barnes.)

signed, but these were not the findings that were read by Mr. McPherson on May 3rd.

The Court: Well, it doesn't make much difference what Mr. McPherson read on May 23rd. You are satisfied that these [193] are the conformed copies of the original findings?

The Witness: I think these are true copies of the ones signed by the Court.

The Court: And also conformed copy of the judgment?

The Witness: That I wouldn't know, your Honor. I believe that this quite in order, your Honor.

The Court: Well, do you care to offer the conformed copies of the findings and the judgment as an exhibit in evidence?

The Witness: I think it should be there in view of the fact that the wrong ones were read, your Honor.

The Court: Well, I won't receive them on that ground.

Mr. McPherson: I suggest they be received. We will offer them if she doesn't.

The Witness: Do you want to offer them, Joe, then?

Mr. McPherson: We will.

The Witness: What I am trying to show, your Honor, is that I have made an allegation of harassment.

The Court: Well, let's do this first. Apparently

(Testimony of Pancho Barnes.)

there is no objection, so let me have the documents, will you, Mr. Eiland?

The conformed copy of findings of fact and conclusions of law, in action in this court, Pancho Barnes, Plaintiff, vs. Joseph Stanley Holtoner and Marcus B. Sacks, Defendants, No. Civil 15409-C, and—— [194]

The Witness: Then I would like to direct——

The Court: Wait a minute. And the judgment, conformed copy of the judgment in the same action, signed by James M. Carter, on the 22nd day of September, 1954, are received in evidence and marked Defendants' Exhibit No. Q.

(The documents referred to were marked as Defendants' Exhibit Q, and were received in evidence.)

The Witness: Your Honor, I think maybe you didn't get the number correctly there, as you read it; it is Civil 15403-C.

The Court: Yes, Civil 15403-C.

The Witness: I would like to direct your attention, your Honor, to finding number 9 on page 3.

The Court: Yes, if you will just wait until the clerk returns it to me.

The Witness: Oh, I am sorry.

The Court: You wish to direct my attention to?

The Witness: Finding number 11, at the bottom of page 3.

The Court: Starting at the bottom of page 3, yes.

The Witness: "That Joseph Stanley Holtoner



(Testimony of Pancho Barnes.)

made a statement to the effect that the plaintiff's ranch should be bombed; that said statement was made either in anger or in jest and without deliberation or intent to carry out the action implied therein; that the plaintiff's ranch was not bombed nor were any threatening acts or gestures made in furtherance of this verbal statement; but a fire of unknown [195] origin destroyed five buildings, including the ranch house on November 14, 1953."

The next finding, number 12, "That Marcus B. Sacks made a statement to the effect that the plaintiff's ranch should be bombed; that said statement was made either in anger or in jest and without deliberation or intent to carry out the action implied therein; that the plaintiff's ranch was not bombed nor were there any threatening acts or gestures made in furtherance of this verbal statement."

Now, it is just a question of where there is smoke there is fire, your Honor. It was necessary that this finding was made by the court, finding number 15:

"That there was no impropriety or immorality involved in the plaintiff's operation of her guest ranch, known to or condoned by plaintiff; that the defendants, or either of them, did not make any statements or insinuations to anyone," well, they say they didn't make any statement.

And finding number 16: "That the Department of Justice authorized the use of the Federal Bureau of Investigation in investigating certain

(Testimony of Pancho Barnes.)

aspects of this litigation; that the use of the Federal Bureau of Investigation was within the authority of the Attorney General of the United States; that the Court refused to take proof as to the course or nature of the precise investigation made by the Federal Bureau of Investigation.”

Finding number 29—no, finding No. 19, page 6: “That the defendants refused to permit Constable Hodges of Mojave”—the defendants in this case were General Holtoner and Colonel Sacks—“refused to permit Constable Hodges of Mojave to make a service of process on General Holtoner at the Edwards Flight Test Center; that said action was the result of a misunderstanding of the existing law as to jurisdiction of the service of process on the part of Joseph Stanley Holtoner and Marcus B. Sacks; that in the preliminary proceedings in this action, involving removal to the District Court, the defendants were admonished and cautioned by this Court as to the manner in which they should submit to the service of process; that thereafter there have been no further misunderstandings as to the service of process; that after such admonition there has been no discipline, punishment, or recrimination against the civilian employee, Clifford Morris, who actually made service of process upon General Holtoner in a restricted area at Edwards Flight Test Center; that Clifford Morris was frightened and intimidated by the defendant Sacks at the time of his service of process on General Holtoner prior to the admonition of

(Testimony of Pancho Barnes.)

the Court above referred to, but there was no conspiracy between the defendants and Ed Carroll, or any other person, to frighten or intimidate Clifford Morris in connection with the service of process.”

And the next one following, your Honor, number 20: “That Joseph Stanley Holtoner did ignore a subpoena directed to him from the Superior Court to attend a deposition; that said subpoena was ignored because the case was in the process of being removed to the United States District Court.”

Over on page 8, finding number 29: “That there is no evidence submitted as to the net profits or losses of the plaintiff in the operation of her ranch activities prior to and during the period of the alleged acts complained of in plaintiff’s Second Amended Complaint, but that plaintiff waived, at the start of the trial, any claim for damages in excess of \$10.00 from each defendant; that there was evidence that plaintiff’s gross income dropped off after General Holtoner took command of the base.”

In the conclusions of law, on page 9, conclusion 3: “That all of the activities of the defendants in conjunction with the plaintiff and/or her ranch activities were either actually, or honestly believed by them to be, within the scope of their duties as members of the United States Air Force.”

These findings are interesting from two stand-points. One, to clarify the record over these other findings I have read, and one is there does show in there certain harassment, recriminations, and so

(Testimony of Pancho Barnes.)

forth, and this is offered, your Honor, in line of the fifth point, that there has been [198] discrimination against this place, discrimination as to the subject property, and the plaintiff because of the subject property. [199]

\* \* \* \* \*

The Witness: Well, I would like to testify to this then, because I am not sure all of this is in the record.

At the subject property, at the time the subject property should have been, or is purported to have been taken under Public Law 564 by the Congress, that there were on the ranch at that time, besides and including the Airport, with a State license and a federal license; the dairy, I believe, was not then in operation but there had been a dairy under state license many years previous; there was a licensed hog ranch on the property, that would be a county license; there was a licensed hotel under the California Safety and Health Code, licensed by the State [200] of California; the restaurant was licensed by the County of Kern; and the liquor license was a state liquor license, on the property.

Now, your Honor, I would like to testify that the Wherry Housing is closer to the runways and the Air Base than the subject property, that it has many thousands of people in it, that it has public schools, public roads operated by Kern County, the schools are maintained by Kern County, the public library—

(Testimony of Pancho Barnes.)

Mr. McPherson: We have been over this three times.

The Witness: —operated by Kern County, and stores.

That has not been testified to. That has been in my allegations in writing, and it has been brought up, but we had no testimony yesterday, when I tried to get that testimony on yesterday with Mrs. Greene we didn't get it in. But there is a liquor store, a grocery store, barber shop, restaurant, beauty shop, and a large market, and a great many, various things comprising a complete town, which is, as I have called it in my allegations and my brief, a monopoly town all run by the Hal B. Hayes Corporation, in which the proprietors that have these various grocery stores, liquor store, and establishments of business, pay a ten per cent gross to the Hal B. Hayes Corporation, and are all under one thumb, so to speak.

I have an awful feeling, like when you go on a trip, [201] you think you have left your toothbrush at home, or something important.

Mr. McPherson: If you have left anything I will send it to you.

Miss Barnes: Your witness, Mr. McPherson.

Mr. McPherson: No questions. You may come down.

(Witness excused.)

Miss Barnes: Mr. McPherson, I would like to put you on the stand.

## JOSEPH F. McPHERSON

called as a witness by the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Just state your name for the record.

The Witness: Joseph F. McPherson.

Miss Barnes: Mr. McPherson, I was talking to Mr. Deutz, Civil Division, in your place down there——

The Court: Just a minute, I think you should identify the witness for the record, Mrs. Barnes.

## Direct Examination

Q. (By Miss Barnes): It is so difficult for me to remember these things. Mr. McPherson, will you please state your name?

A. Joseph F. McPherson, Assistant United States Attorney in charge of the Lands Division, in Los Angeles. [202]

\* \* \* \* \*

Q. Mr. McPherson, I want to refer to your brief in opposition to motion to dismiss, to set aside declaration [204] of taking, and judgment thereon in this case. Has your Honor a copy?

A. Which one? Brief in opposition——

Q. To the motion.

The Court: This was filed——

The Witness: Opposition. Yes, I have a copy before me.

The Court: Just wait and let me see if I have it.

The Witness: Filed June 13th.

The Court: I have it too, opposition to motion

(Testimony of Joseph F. McPherson.)

to dismiss or motion to set aside declaration of taking and judgment thereon, filed in this court June 13th, 1955.

Miss Barnes: Yes, your Honor.

Q. Now, Mr. McPherson, I wish to refer you to the first page, line 29. You have written in there Air Materiel Command. Do you wish to correct that?

A. Well, let me see my affidavit. That could be a mistake.

Q. Well, you have in the next paragraph Air Research Command.

A. It could be a mistake.

Q. Well, it is a small thing but I wondered if you wished to correct it.

A. That was taken from the Congressional hearing on the application, and I think that it has since been placed under the other command, but at the time the hearings were [205] held on the bill which authorized the acquisition of your property it was under this command, and I think that is what I probably had in mind.

Q. But it is now under the Air Research and Development?

A. That is my understanding.

Q. In paragraph 3, at line 19, it says the base comprises the area of approximately 300,000 acres, being developed in accordance with the master plan approved in 1950.

A. Yes.

Q. By whom?

A. What do you mean, by whom?

(Testimony of Joseph F. McPherson.)

Q. Well, who approved the master plan?

A. I have it here and the approvals are shown on it.

Q. Well, do you mean Congress, by any chance?

A. Well, it was preliminarily, and the document many times has been submitted to the Congress, but the approval would be by the armed services.

I have brought here, your Honor, so we can put this thing to rest some time, the preliminary master plan of the base as it existed and as it was submitted apparently to the Armed Services Committee at the time of the much disputed Myers testimony. It was originally classified. It has been unclassified, and I think we may mark this copy as an exhibit, with leave to substitute a copy and withdraw [206] it if such is the need of the armed services.

Miss Barnes: I am not sure that has what——

The Witness: Just one minute, please. You asked a question and I am answering it.

Miss Barnes: Well,——

The Witness: Now, I have——

The Court: I think we better move this along orderly. The document described by Mr. McPherson will be marked Government's Exhibit No. 2 for identification. That is the one that Mrs. Barnes has now.

Miss Barnes: Would you say you are relying——

The Court: Let's have the document marked as Government's Exhibit No. 2 for identification.



(Testimony of Joseph F. McPherson.)

(The document referred to was marked as Government's Exhibit No. 2 for identification.)

The Witness: As a part of the same answer I have caused to be sent here a certified copy of the report to accompany the general master plan of Edwards Air Force Base at Muroc, California, which is certified as being a true copy by Brigadier General C. P. Brown, Deputy Assistant Chief of Staff of Installations, and——

Miss Barnes: What date?

The Witness: Just one minute. The approval was in a series of dates by the Base Commander, on February 21, 1950, Colonel John G. Griggs, Secretary, Command Planning [207] Board, Headquarters Air Materiel Command, in March of 1950, and General James B. Newman, Jr., Director of Installations, Headquarters Air Force, May 15, 1950, and a very large tome which contains the pictorial plan in detail of the base, which is likewise certified to by General C. B. Brown, Brigadier General, and which shows approval by the same officers, and also on what purports to be the same dates. The certificate of execution is attached to and bound into the volume.

The certificate further is to the effect that the attached master plan is still in effect, and after diligent search no other master plan for Edwards Air Force Base, approved by Headquarters United States Air Force is found to exist in the records of this office.

Of this book, in order to shorten it, in my opin-

(Testimony of Joseph F. McPherson.)

ion from having examined it—of course the proffer therefore will be limited subject to defendants' examination and modification, if she wishes—there is actually only one map of any consequence, so far as this case is concerned, and it is to be found in the book labeled, in the block captioned General Master Plan of Edwards Air Force Base, tab A-2—

Miss Barnes: Mr. McPherson, pardon me just one moment. Isn't this practically a replica of the other two maps you brought along? [208]

The Witness: Just a moment. According to the index tab A-2 is the vicinity map. I have had reproductions in kind made of that map, which I would like to substitute for this sheet of the big book, and return this valuable document to the Air Force. I have a copy for the Court and also one for Miss Barnes.

The Court: Now, the first, I mean the smaller document you referred to relating to the master plan, where is that?

The Witness: That is the preliminary master plan.

The Court: Yes.

The Witness: That is referred to in the Congressional hearing.

The Court: Well, that is No. 2 for identification, is it not?

The Witness: Yes, your Honor.

The Court: Now, the tome is to be marked Government's Exhibit No. 3 for identification.

(Testimony of Joseph F. McPherson.)

The Witness: Well, it should be 4, because the detailed report would be 3.

The Court: Oh, that is what I had in mind. The detailed report of the master plan is marked Government's Exhibit No. 3 for identification.

The Witness: With leave to substitute a copy if need be.

The Court: Yes. Will you hand that to the clerk so he will get it marked without danger of error.

(The document referred to was marked as Government's Exhibit No. 3, for identification.)

The Court: And then the tome.

The Witness: I would like to have marked only, at the moment, the map identified as tab A-2, which deals with the real estate, and if any additional portion of the book is required it, of course, may be offered. But I do not think it would serve any useful purpose to put in this entire document.

The Court: The map then that is labeled Tab A-2——

Miss Barnes: Well, what I want to ask——

The Court: ——is marked Government's Exhibit 4 for identification, and you may substitute a true copy of that map in place of the original.

The Witness: And to complete the proffer I hand the clerk a——

The Clerk: This is 4 for identification?

The Court: Yes.

(The document referred to was marked as

(Testimony of Joseph F. McPherson.)

Government's Exhibit No. 4, for identification.)

Miss Barnes: Mr. McPherson,—

The Witness: Just a minute. Let's finish marking the documents.

Miss Barnes: O.K.

The Court: The substituted map will be marked as [210] Government's Exhibit No. 4 for identification. And you have a copy of the map, Mrs. Barnes? You have been furnished a copy?

Miss Barnes: Yes, your Honor.

The Court: Of Government's Exhibit No. 4, for identification.

Q. (By Miss Barnes): Mr. McPherson, you have just proffered certain exhibits for the government. A. Yes.

Q. You have also just brought in a map that is purported to be a replica of the one in the original master file? Is that true? A. That is correct.

Q. You, I believe, made the statement that was probably the only thing in the book that would be of interest to the subject property, is that correct?

A. Well, that's my opinion, Miss Barnes. I have inspected it, and we are dealing here with the matter of acquisition of real property for inclusion in the perimeter of the base, and the map which I have prepared the substitute copy for is the reproduction of the real estate sheet in the large assembly there.

You are at liberty to examine the book, and if you want any more we will offer it. [211]

(Testimony of Joseph F. McPherson.)

Q. No, I want to know this: Is there anything in that whole master plan that applies to the subject property other than there happens to be—the subject property happens to be located within the confines of the map?

A. No, there is no special treatment of your property. It is just found within the perimeter as depicted on Exhibit 4 for identification.

Q. In other words, we may rely on that so that we can let the valuable exhibit go?

A. That's my impression, but I would prefer that you examine it yourself, in view of your attitude. That is my opinion.

Q. Well, I am interested, of course, in what the Court knows, and what I am anxious to do is to bring home to the Court that there is nothing regarding the property or any use or anything that the government has for the property, other than the fact that it is on that map.

A. Oh, yes, the report deals specifically with each structure on the base, and what it is designed for, and the purpose of its use.

Q. That's fine. Now, you said on the base. Does it have anything to do with the subject property, other than the map as it stands? You have answered it once.

A. As I understand it, your property is not given any special treatment; it is a portion of the large area [212] which is under treatment in the plan.

Q. But there is nothing in that plan that again

(Testimony of Joseph F. McPherson.)

refers specifically to the property? I mean, I am asking you, is there?

A. Not that I recall, not to your property especially.

Q. Yes, just our property, the subject property.

A. That is my understanding.

The Court: Do I understand, Mr. McPherson, that Government's Exhibit No. 3 for identification, which as I understand is the detail of the master plan, does not specifically mention the subject property?

The Witness: That is my recollection. If it does, I don't remember seeing it. It deals with the entire area and the several features of improvements that are to be put there and what they are to be used for.

The Court: And is the subject property specifically mentioned and designated in Government's Exhibit No. 4 for identification, the map?

The Witness: That appears on so many, I don't know whether it is on that one or not. (Examining.)

Yes, your Honor, it is on Exhibit 4 for identification, as the Barnes Airfield, and just below it the legend "to be abandoned."

Q. (By Miss Barnes): Was this map shown to the 81st Congress? [213]

A. Well, I don't know whether it was or not, Miss Barnes. I would doubt if it was. The map in the preliminary plan purports to be the one that was shown to the Congress. A perimeter corresponding in exact detail with the perimeter as is

(Testimony of Joseph F. McPherson.)

shown on Exhibit 4 for identification was shown to the Committee.

Miss Barnes: What was that?

(The answer was read.)

Miss Barnes: I don't remember, did you put one of these in the record?

A. That is in the preliminary master plan, the document which you are now showing me is one of the maps, reproduction of one of the maps—

Q. That might have been one?

A. —that is in the preliminary plan.

Q. Is this the one you said might have been shown to Congress?

A. It is the one I think was shown by General Myers, and referred to by him in his testimony, and when the opportunity is presented I will show the Court why I think so, though, for the record, General Myers is in Europe, we were not able to contact him. His associate in the presentation to the Committee was General Spivey; he was contacted and stated he had no recollection of the map and was not able to identify it. [214]

The Court: That map is part of Government's Exhibit No. 2, is it not?

The Witness: Yes, your Honor.

Q. (By Miss Barnes): I want to come to the question I was asking, in your brief in opposition you say "at the present the base encompasses an area of approximately 300,000 acres, being developed in accordance with the master plan approved in 1950."

A. That is correct.

(Testimony of Joseph F. McPherson.)

Q. I want to know exactly who approved it, and would that be, for instance, Colonel S. A. Gilkey?

A. No. The master plan approved in 1950 is the big tome from which Exhibit 4 for identification was taken. The approval of that master plan is shown by the certificate attached to it to have been made by other and different officers than those who approved the preliminary master plan.

Q. Now, when you say approved, Mr. McPherson, you are speaking of Air Force approval?

A. Certainly.

Q. You are not referring to Congressional approval? A. Not necessarily.

Q. Well, are you referring to Congressional approval?

A. I do not know that the Congress ever approved it, though they approved portions of it, they approved the land [215] acquisition section.

Q. When you say they did, you mean all of it?

A. Yes.

Q. Of course, we are dealing now with Public Law 564, because what they may have approved in later years I am not positive of. However, you made some statements to his Honor, the Court, that the Secretary of the Air Force could claim anything that was necessary and that was it; in other words, you were sort of pointing out to the Court it did not really have jurisdiction in the case, such as this.

I want to refer to your opposition—your Honor has a copy there—page 2, paragraph 4, which says, starting at line 23: “So far as is material to this



(Testimony of Joseph F. McPherson.)

proceeding the enlargement of Edwards Air Force Base involving among others this condemnation results from the determination of necessity made by the Secretary of the Air Force under and pursuant to and among others the Act of June 17, 1950, Public Law 564, 81st Congress." The statutes come after that.

Now, several public laws are cited, which I believe are general, don't refer to the subject property, but are general condemnation laws. These defendants are not doubting the right of condemnation nor the proper laws under which it is usually condemned. We are only interested in the subject property and the statutes regarding it, under which it is [216] purported to be taken.

Now, what I am bringing up now is, Mr. McPherson, at line 26, you say "the Secretary of the Air Force under and pursuant to," in other words, you recognize there that there is a limit to his scope of authority and he is bound by the powers he is given by Congress, don't you?

A. It is not my province to express an opinion on the Secretary of the Air Force's authority. I should say that, as most others will tell you, of necessity he has no power except such as is given him by the Congress of the United States. [217]

\* \* \* \* \*

Q. (By Miss Barnes): Just one question I would like to ask Mr. McPherson: Who did make the changes on the declaration of taking?

A. I don't know who actually made them. I

(Testimony of Joseph F. McPherson.)

understand [229] they were made at the direction of Mr. Weymann, who was proceeding under the authority of the telegram from the Attorney General, or Assistant Attorney General, a copy of which I furnished you the other day.

Q. Was there any authority ever from the Secretary of Air who made the paper?

A. None would be required, and as far as I know no express authorization or direction was given to him, but immediately the separate suit was filed the preliminary transcript was prepared in accordance with our regulations, sent to the Attorney General, and he thereupon wrote the title opinion to the Secretary, a copy of which was furnished you, and he accepted it and acted upon it.

The entire chain of correspondence having to do with the filing of the separate suit, and the proceeding involved in the acquisition of your land, is encompassed in that affidavit which I furnished you, and I think I have the whole file there and you are at liberty to inspect it for that purpose. I think we gave you a copy of all of the documents in our file that bear upon the authority to proceed against your property by way of separate suit.

There is one additional matter which should be mentioned——

Q. Was there ever——

The Court: Wait until Mr. McPherson finishes.

A. ——Declaration of Taking No. 3, a preliminary copy [230] of which we had received, which was also prepared for filing in 1201-ND, actually

(Testimony of Joseph F. McPherson.)

was split in two again, and is on file in this court in two other separate suits.

Q. I have them both here.

A. The numbers of which I have forgotten, the James B. Hill case, and the other is the Mojave Mud company.

Q. They didn't make any declaration of taking in that case.

A. The authority was given from Washington for the transmittal of the D.T. to us.

Q. How many months later was the Mojave Mud Company suit filed as of, just approximately?

A. I didn't hear you?

Q. About how many months later?

A. I have forgotten, but it could be readily ascertained by examining the file here.

Q. Was a certified copy of the declaration of taking as filed ever sent back to the Secretary of Air or to the Attorney General?

A. Well, I couldn't say. I believe there would be, Miss Barnes.

Q. There is a letter here that says it wasn't—I mean, sort of—has his Honor got copies of these files?

The Court: Yes, I have. You mean the affidavit?

Miss Barnes: Well, not exactly the affidavit, letters. [231]

The Court: Well, they are attached to whose affidavit?

Miss Barnes: This is attached to the affidavit of Mr. Lavine.

(Testimony of Joseph F. McPherson.)

The Court: I have it.

Miss Barnes: They have it marked Exhibit 9. It is a letter of March 3rd: "Certified and plain copy of complaint, certified and plain copy of decree on declaration of taking, duplicate original certificate of the clerk evidencing the deposit of \$205,000."

But there is no certified copy of the corrected declaration of taking ever sent back, that I can find any record of. A. Well, I——

Q. Can you show me any?

A. I don't know that there was any. Ordinarily we would not transmit the declaration back to the Attorney General, because he keeps one himself and conforms his own, and he transmits them to the field. The procedural operation changes quite frequently, as I have already explained to you on previous occasions. The department has now come around to our way of thinking, and they no longer enter decrees on the declaration of taking, the declaration itself is recorded rather than the decree.

Q. I put that in my brief, hoping his Honor would give us a little something on it, some of the attorneys in [232] Los Angeles say a little blurb on the subject, because I think that decree or judgment or declaration is an un-American thing.

A. I think it is an unnecessary act.

Miss Barnes: I think——

The Court: Let's move along here. We are going to have to conclude this matter this after-

(Testimony of Joseph F. McPherson.)

noon, and Mr. McPherson may want to offer some evidence on behalf of the government.

Mr. McPherson: Yes, I have some affidavits.

The Court: Have you any further questions of Mr. McPherson?

Q. (By Miss Barnes): Would you say then, Mr. McPherson, that they have ever either in Washington—in the United States Attorney's office or the Air Force headquarters, have ever had a true, corrected copy, as we have seen it, of the declaration of taking?

A. I wouldn't have any opinion one way or the other.

Q. You have no knowledge or records that a true corrected copy was ever sent to them?

A. Not according to my file there wasn't, and I don't know whether the District Engineer transmitted it, but we have a letter showing that he transmitted the correction as far as the division, but whether they went on to Washington with it or not I don't know. [233]

Q. It is interesting that you mention that. They say we are transmitting the first page as corrected. Why not the second page? That is also corrected. Can you explain that?

A. Well, that is more or less an innocuous thing, they just struck out the word "amendment" or "amended" so that would not cause the necessity.

Q. Mr. McPherson, can you tell me as an attorney if you were making a complaint, an amended complaint, wouldn't there be something in that

(Testimony of Joseph F. McPherson.)

amended complaint that would state that it was an amended complaint, that it was to be included or appended to another case, with a **complete case** with the amount of acreage, and that so many acres were going to be added under the other title? Wouldn't it show in some way?

A. As a matter of fact, there are two groups of cases that would fit your question; one typical example would be Whittier Narrows, there is about 1,000 or 1,500 parcels in that case, it becomes very cumbersome. I think we have filed today 58 or 60 D.T.'s in that case, declarations of taking, and each one has required an amendment to be made of the complaint. The paper work is extremely burdensome, and unnecessary.

In the Chocolate Mountain acquisition we had some 3,280 parcels, I don't know how many amendments there were in that, 13 or 14 amendements are common practice. We have [234] been trying to stop that, and beginning with the Edwards case I think you will find no amendments that have resulted in additional property; each separate acquisition is a separate suit. There are about 18 or 20 now pending for the Edwards acquisition. That is the method of operation.

Q. I am not sure you didn't get a little off the point on that question. The question was not for an example of what you did with the Whittier Narrows, or anything, or how you add these things. I am saying, as an attorney, in a complaint, if you were going to file a paper that would look contra-

(Testimony of Joseph F. McPherson.)

dictory, such a declaration of taking would if it suddenly turned up with extra acres that shouldn't have been there, wouldn't there be something on that declaration of taking, some paper was made, if it were intended to be filed as a declaration of taking No. 2, not on property already in that case. In other words, there could be cases where such a suit came up or something about a piece of property which was already involved, where you might want to correct or remake something about a parcel of property that was already taken, so to speak, in other words, there was some irregularity, but where you are adding property wouldn't—wouldn't that complaint in order not to confuse the issue, say this is added land to be in this declaration of taking on such a case number, bearing such a number of acres as a title, wouldn't that [235] show in there somewhere?

A. No, as a matter of fact, if you will think about it for just a minute—I don't know, but I would wager it is true, if you look at case 1201-ND and count the acreage that was condemned in it, you will probably find there were 1700 and whatever that was——

Q. 1710.73.

A. ——and had this additional 360 acres been put into that case by way of D.T., the caption of that suit would not have changed.

Q. I understand that.

A. If you add the 360——

Q. I understand that, but then if I took as I

(Testimony of Joseph F. McPherson.)

did the 1710.73 acres of land and went down through it and took all of the land comprising this and added them up very carefully and found out they totaled exactly 1710.73 in acreage, in other words, it added and that was it. Now when you suddenly put in an extra 360 acres and somebody wanted to add it up, they would say there is something wrong about this, it doesn't total. Wouldn't there be something in the complaint that would show that you were in this case deviating from the number of acres in the title?

A. Well, I wouldn't know, because there would be no rule governing it. I think the thing that you should know, to understand what prompted this operation, is a simple [236] division of authority in the government. Property is to be taken, what estate is to be taken, and when it is to be taken, is a matter for the division of the Secretary of the Air Force, and—

Q. And what they are going to do.

A. —the proceeding in which it is to be acquired is under the exclusive control of the Attorney General of the United States, and he is in no sense required to amend the complaint or follow a directive or requested proceeding of the Secretary of the Air Force, or anyone else. He is the sole judge of how he shall go about doing it.

Q. If he is the sole judge, the Attorney General of the United States, as to changing without consulting them the documents of anybody in the



(Testimony of Joseph F. McPherson.)

United States, for instance, that he wants to change a document?

A. Oh, I don't think he would make a substitution of a parcel or any substantive change in it, but to conform to the caption of a document which is prepared for our convenience rather than the Air Force——

Q. What I am getting at——

A. ——is of no consequence.

Q. What I am getting at now, Mr. Huggins signed a declaration of taking No. 2 under an impression that that particular property was needed, I think, for immediate construction, and was in that which should have been what [237] they called priority No. 1. Now that was evidently his intention, from what I can get, and I can point that out right from your own documents. Now, other people decide later that maybe this shouldn't be done, so they just, I would consider it more or less in an arbitrary and capricious manner, X out and change over what he signed, and they don't even get any authority from him or notify him, or even show him a copy or even say we did this.

A. He evidently got a copy. I don't know from whom, but he eventually got a copy.

Q. Well, can you prove that, or is that hearsay?

A. I know that to be the case; I couldn't prove it, but I could eventually find the one that he got, because we sent it right back to the Engineers and they sent it out of here to the division, and I suppose if we go to the trouble, the division——

(Testimony of Joseph F. McPherson.)

Q. In other words, you believe that Edwin V. Huggins knows who changed it?

A. No, E. V. Huggins doesn't know, but his office knows it.

Q. Well, he is the one that signed it.

A. I doubt if he knows he signed it.

Q. There we have an interesting point. Do you want to cross examine yourself, Mr. McPherson?

Mr. McPherson: I don't think there is any occasion. [238]

The Court: Very well.

(Witness excused.)

Now, do you have any more witnesses, Mrs. Barnes?

Miss Barnes: I don't believe it is necessary, your Honor.

The Court: Now, are you ready to rest so far as your motions are concerned?

Miss Barnes: I may still argue?

The Court: Oh, yes. I am talking about testimony.

Miss Barnes: Yes, your Honor.

The Court: Well, the government?

Mr. McPherson: Yes, I have a few documents that I want to introduce. Where is my file?

The Court: Mr. Eiland, these affidavits of Richard A. Lavine should be filed, and of August Weymann.

Mr. McPherson: Now, first, your Honor, I have given Mrs. Barnes, two copies, one colored and one uncolored, of the map which is attached to the Gov-

ernment's Exhibit No. 2 for identification. There is nothing peculiar about this map, except there is noted on it Tracts A, B, C, D, E, F, G and H, with the acreage, and I have had a copy of that colored so that the segments are easily distinguished, and I should like to have it marked 2-A for identification, as a part of that exhibit, and as modified, and offer it in evidence. [239]

The Court: The map is received and marked as Government's Exhibit 2-A for identification.

(The map referred to was marked as Government's Exhibit 2-A for identification.)

Mr. McPherson: I would now like to offer in evidence now the documents now marked for identification as Government's Exhibits 2, 3 and 4.

The Court: And 2-A?

Mr. McPherson: And 2-A.

The Court: The documents are received in evidence and given the same numbers.

(The documents heretofore marked as Government's Exhibit 2, 2-A, 3 and 4 for identification, were received in evidence.)

Mr. McPherson: Now, at the conclusion of this hearing may I withdraw the Air Force copy of the report to accompany the master plan, which was marked as Government's Exhibit 3? I think it will serve no useful purpose to reproduce it, unless Mrs. Barnes wants it.

Miss Barnes: What is it intended to do as far as the Judge is concerned?

Mr. McPherson: Nothing, except it was a part and parcel of the proffer and I offered it complete.

Miss Barnes: In other words, it is of no value to any decision he may make?

Mr. McPherson: Not in my opinion. If I had offered the [240] other book and you had said it was not complete I would have been embarrassed, so I offered the whole business.

Miss Barnes: If it is nothing that will influence the Court in any respect one way or the other, then——

The Court: Well, does the government——

Miss Barnes: Well, does it pertain to the subject property in any manner?

Mr. McPherson: No.

The Court: The government's exhibit then, marked 3 for identification, is that correct?

Mr. McPherson: 3 for identification.

The Court: May be withdrawn and returned to the agency producing it.

Mr. McPherson: Now, I should like to offer a photostatic copy of the hearing, *which may* cumulative of what Miss Barnes offered this morning, but I haven't had a chance to proofread them, and I think we can do it quicker this way, as it contains what I want, of the first session of the 81st Congress, being page 3277 and then jumping to page 3350 and those pages which follow in the assembly. The purpose of offering page 3277 is simply to show the date and time and place and the Committee which was hearing the matter. I offer this as the Government's next exhibit in order.

The Court: You know what the document is?

Miss Barnes: Yes, your Honor, I do; I understand the [241] purpose, your Honor.

Mr. McPherson: It may be a copy of yours.

Miss Barnes: They are. The only thing is, I want the notation made there that they have to do with the 81st Congress, the first session, and the justification here was not allowed by the 81st Congress, the first session, nothing came of it, and the——

Mr. McPherson: You can argue that later on.

Miss Barnes: I want it noted here, because I don't want the Court misled.

The Court: The document is received and marked the Government's Exhibit No. 5 in evidence.

Mr. McPherson: Of course, I do not agree it was not authorized. I simply wish to direct the Court's attention to one small excerpt in the exhibit, so that you will understand my next proffer. On the second page of the assembly, which is letter 3350, at the bottom of the page, is the entry RD-38-Acquisition in fee simple 139,000 acres of land in segments A, B, D, E, F and G of the land acquisition program of the master plan. You will note the numbers are in sequence except C.

Now, if you will examine the map which is attached to the preliminary plan, which I had duplicated in color for you, the segments outlined by letter, it will be observed to be the same in sequence, though bearing no [242] legend, but separated by colors on Defendants' Exhibit B.

(The document referred to was marked as

Government's Exhibit No. 5, and was received in evidence.)

Mr. McPherson: Now, by using some of Miss Barnes' sixth grade arithmetic, we will produce another startling——

Miss Barnes: You are being sarcastic.

Mr. McPherson: That is correct. I have had the segments of the map attached to Defendants' Exhibit B counted by sections. The Court will observe there are certain cross hatched sections, which represent the public domain in the area, and from the legend on the map the number of previously and already acquired direct purchase tracts, and the remaining sections in the exhibit, which includes, for the Court's information, the area legend Barnes Airfield in Section 20, total 139,356 acres. So also on Defendants' Exhibit C, which was——

Miss Barnes: Would you please, Mr. McPherson, give the date of the map?

Mr. McPherson: Well, it is part of your exhibit, Miss Barnes, it was introduced as Exhibit B. I thought you knew what you were doing.

Miss Barnes: Well, are you reintroducing it?

Mr. McPherson: No, no.

Miss Barnes: Well, will you please state to the Court what the date is?

Mr. McPherson: April 29, 1952. [243]

Miss Barnes: And will you state the priority number in which the defendants' property is?

Mr. McPherson: Priority No. 1.

Miss Barnes: Wait a minute. In 1947. They have changed it. O.K.

Mr. McPherson: Now, on Miss Barnes' Exhibit C, which is the December 27, 1950 exhibit, which is attached to the 41,555 acres, which according to her version of that exhibit represented the mud mines and the area for the relocation of the tracks and lands in the vicinity, was by using the same method, that is 640 acres to the section, does include the Barnes property and it is shown on the map, and it is the same which accompanied the preliminary exhibit, and on that map Miss Barnes' property is shown in priority No. 4, rather than No. 1, so that——

Miss Barnes: Would you give the date of that map?

Mr. McPherson: The map is the same, Miss Barnes, 1947. I don't think you mean what you say when you ask for the date of the map. The date of the exhibit to which the map is attached is, base letter, is December 20, 1950.

Miss Barnes: And the priority at that time?

Mr. McPherson: Was No. 4. Now, the base letter on the map which you, under your breath, said had been changed, and which of course has not, is Exhibit B which was dated in 1952, and in that letter you are in priority No. 1. [244] So I don't think the priority would make any difference.

Miss Barnes: Yes, I think it is very important.

Mr. McPherson: The only purpose I have in calling the Court's attention to the fact, it doesn't make any difference whether we are proceeding here on 139,000 acres or the 80,000 acres or the 41,000

acres. In either case, Miss Barnes' property was included.

As an additional exhibit on the same subject, I have procured from the Air Force and offer, and hand Miss Barnes a copy, a letter from the Deputy Chief of the Real Estate Division at Washington, dated May 20th, addressed to myself, transmitting a further copy of acquisition project No. 20, which is also referred to in this previous exhibit, which I will go back to in a moment.

The Court: Letter dated May 20th, what?

Mr. McPherson: Letter of transmittal to me of May 20, 1955. Now, the purpose of this proffer is to show that attached to it, in the office of the Headquarters of the United States Air Force is the Senate and House approval by the Chairman of the Military Affairs Committee, or the Committee on Armed Services it is now called of both Houses, of acquisition project No. 20, which is Edward Air Force Base, and is shown to be such on these enclosures. This authorization is given on this acquisition report, which I also think has confused Miss Barnes somewhat in her [245] presentation.

You will remember that when I was analyzing for you the issues and statutes involved, I made reference to Public Law 155 of the 82nd Congress. That law, together with one other which I have mentioned, which citation I have forgotten, relating to the Air Force, required submission of reports to the Congressional Committees of their activities under these rapidly expanding programs. Now, the



submission of the report to the Congressional Committee, which was required by Public Law 155 is by no sense an inference or contention that the acquisition was under 155, simply the report was required. And if you will examine both Exhibits B and C, as offered by Miss Barnes, and the exhibit which I now proffer, you will find that the authorization act relied upon and approved by the congressional committee, were Public Law 564 and 910 of the 81st Congress, and Public Law 155 of the 82nd Congress, and the appropriation law is as I gave it to you originally.

I ask that document be received in evidence.

The Court: It will be Government's Exhibit No. 6. Do you have a copy?

(The document referred to was marked as Government's Exhibit No. 6, and was received in evidence.)

Miss Barnes: Yes, your Honor. I think it is already in evidence, almost the same document. [246]

Mr. McPherson: It is in evidence without the express approval of the Senate and House.

Miss Barnes: Well, it says approved by the House and Senate.

The Court: Government's Exhibit No. 6 in evidence.

Mr. McPherson: I should like then to offer in evidence an affidavit of General Holtoner, which bears upon an allegation made in the affidavit filed by Miss Barnes concerning activities of the General. Suffice it to say they were categorically denied.

The Court: Do you want to submit that as an exhibit?

Mr. McPherson: Well, I just offer it in evidence. It is an affidavit.

The Court: Yes.

Miss Barnes: May I read it first to see if I want it in evidence?

Mr. McPherson: You don't have any choice in the matter.

The Court: Is it a long document?

Ordinarily these motions of this type are heard upon affidavits. The affidavit should be filed. You have furnished a copy to Mrs. Barnes?

Mr. McPherson: Yes.

The Court: And likewise the affidavits of Mr. Weymann and Mr. Lavine will be filed. [247]

\* \* \* \* \*

The Court: Well, Mr. McPherson, I recognize, of course, that Mrs. Barnes has not had an opportunity to read over some of the affidavits filed late this afternoon, and she feels that she may want that opportunity, and I don't want her to feel that this Court is by any order excluding her from presenting matters that she feels might be relevant.

Mr. McPherson: But even in her supplemental affidavit if she raises additional matters, we would have to request you to extend the time until after July 15th.

The Court: Yes, there is no question you would be entitled to that. [282]

\* \* \* \* \*

But I will give you, Mrs. Barnes, until July 1st to file counter-affidavits, and I will give the government until, say, July 20th, 25th?

Mr. McPherson: 25th would be better.

The Court: And the reason I give the more time is because Mr. McPherson won't be back in his office, apparently until about July 15th. So I will give the government until July 25th, to file——

Miss Barnes: That is O.K. but they do have another attorney on the case. Mr. Lavine is on the case, and then he told you he made all that he read in court.

Mr. McPherson: Mr. Lavine is doing his annual stint in the Air Force at the moment.

The Court: That will be the order. Then the matter will stand submitted upon the filing of the [283] affidavit of the government. If the government elects not to file counter-affidavits, they will so advise.

Mr. McPherson: We will so indicate.

The Court: You have until July 1st, and it is simply to be a rebuttal, if any, to the affidavits filed in this proceeding during the last day and a half. You understand? It is to be confined to those matters. And the matter will stand submitted after the receipt of the government's affidavits if the government elects to file. [284]

\* \* \* \* \*

Monday, December 5, 1955. 11:30 A.M.

The Court: All right, the 1253 case. There are on the calendar two matters, one is a motion to

strike portions of the answer of Pancho Barnes, E. S. McKendry and William Emmert Barnes, and a motion to set for trial.

Miss Barnes: Your Honor, in the first place, let me say that I have talked to Mr. Richard Lavine, of the U. S. Attorney's office who you probably remember has made affidavits in this case, and so forth, and Mr. Lavine told me how wrong my particular answers were, that I had no right putting in an answer but my own, and I have here now an amended answer, and I want to withdraw my other answer and put this one in, which is in line with what Mr. Lavine spoke about at that time.

Now, since then, your Honor, I have received a communication from Mr. McPherson, in setting this hearing here, and where he is trying to cut out certain parts of my answer which I feel are very much a part of my case, and I wouldn't want to see them out for the reason they are very much a part of my case. I wouldn't want to see them deleted for they are the case, and I feel that just as the government is bound by its complaint, that I have a right to keep my answer consistent with the motions that we have had, the hearings that we have had, and the hearings we may [2] have in the future, and I don't want to delete that which I think is my right, in my answer.

The Court: Have you submitted to Mr. McPherson your proposed new answer?

Miss Barnes: I brought them with me this morning and Mr. McPherson has only had them just this

morning. I don't know whether he has finished reading or not, they are——

Mr. McPherson: You say "them", there is only one.

Miss Barnes: Well, a copy. You have the one, the copy and I have the other.

The Court: Is this proposed new answer on behalf of the three defendants?

Miss Barnes: Yes, and I am withdrawing my personal answer—I put in a personal answer—because I believe Mr. Lavine told me correctly, my interest was with them even though it was only a lease interest, but the interest of the land would have to be decided as a whole, so I withdraw my answer, my personal answer and I also answered with myself and the other co-defendants in another answer which I have amended to include myself and get rid of the surplus answers, and also I have deleted some of the things that the government has wished me to delete, but the main issues, however, I have left in. The government would like to get rid of them too, but I don't think they have a right to.

The Court: Well, let me say this, Miss Barnes, in the [3] first instance, compensation is determined with respect to the property taken as a whole, and then if the parties who own the interest as a whole are not able to agree as to the allocation or division of the compensation, then the law provides that a further hearing to determine how the total award should be allocated among the claimants be had. Is that correct?

Mr. McPherson: It is my understanding of the law.

The Court: Yes.

Mr. McPherson: Before this amended joint answer is filed I should like to be heard on the matter of allowing her to file it, because it almost entirely consists of the same defenses against which the motion to the former answer was directed. It is now a joint answer rather than a single one.

Miss Barnes: There are some substantial changes. I can reiterate those changes.

Mr. McPherson: Will your Honor hear me on her application for leave to file it, or will you permit my objection to stand to the filing of it?

The Court: Well, I was wondering if we might do this: Suppose that we continue the hearing on these matters until 1:30, and that will enable counsel to examine the pleadings and—is there an extra copy that the Court might see?

Miss Barnes: I have the Court's copy here.

The Court: Just hand it to me.

Miss Barnes: The original and the other one. [4]

The Court: Just hand them to me and I will examine them during the recess.

Miss Barnes: I think the crux of the situation, your Honor, is that Mr. McPherson is attempting to take your decision and opinion of the hearings that we had and on the strength of your opinions, your Honor, to delete from my answer some of the issues that were made by you at the time. Now this has not ever come to trial yet and I think I would

be losing some of my constitutional rights if they could not remain in my answer. I don't know exactly all of the ramifications that might mean, but I do know that either now or at some later time I do have a right to appeal to the Court of Appeals regarding the decisions that your Honor has made which, of course, I do not agree with. No hard feelings or anything, but I don't agree with your Honor's decision, and I do not want have granted any motions of the government to delete any of the things that I consider very definitely part of the case, because I want my right to continue my fight on those, and there may be new evidence that will come up if this goes to trial—if there is a trial—and I would like very much to take these things up previous to a condemnation trial, which as I understand it, is merely to decide the value of the property, whereas my case is still standing in my mind not as affecting the value of the property but as to the legality of the taking. [5]

The Court: We will continue the hearing on these matters until 1:30 this afternoon.

(Thereupon, at 11:45 a.m., a recess was taken until 1:30 p.m. of the same day.) [6]

Monday, December 5, 1955, 1:30 p.m.

Mr. McPherson: May it please your Honor, during the recess I took the opportunity to examine the proffered amended answer and I note that beginning with the third page, no, I am sorry, the second page, where the first numbered defenses are set forth, beginning at line 20, and throughout the re-

mainder of the answer, down to the prayer, the defendant proposes and tenders seven defenses, separately. Now, under Rule 15 of the Federal Rules of Civil Procedure, we think that the application should be considered as one for leave to file this answer rather than an amendment as a matter of right. The Court will recall that on several occasions we have had this matter before the Court on special defenses in the form of motions to defeat the Government's right to take and condemn and in those motions a large variety of items or reasons were assigned, both specifically and generally. In addition there were a number of collateral suits filed in this Court in which some of the various issues between these defendant owners and Government officials, including the operating personnel of the Base, Edwards Air Force Base, were made the subject matter of litigation.

After the matter was brought on before your Honor, you granted a motion made by this office, my office, designed to make specific and certain the grounds of resistance to the [7] right of the Government to condemn the property, and thereafter and after the defendant had at least been more specific than was true in the first motion, a protracted hearing was again held on those several grounds and finally, after consideration of the matters heard before you, before this Court, and matters that the records showed had been tendered to your predecessor on the bench, Judge Beaumont, and the records in the several cases tried, I believe, before Judge Carter, this Court made a rather comprehensive



order, which I take it may be considered the law of this case, and that the matters disposed of by that order are not now and cannot properly now be brought again before this Court for consideration.

Therefore, the filing of this amended answer, as I see it, should be governed by Rule 15, since I take it by the tender of the amended answer, and Mrs. Barnes' statement in open court that she had withdrawn the separate answer which she filed, that the motion addressed to the original answers filed on November 14 has been confessed. If I am wrong in that assumption it would not make much difference anyway, because the motion made to strike the original answers would stand over to this. Rule 15 provides as follows:

“A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted, and the action has not been placed upon the trial [8] calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.”

That was Section (a) of Rule 15. Sections (b)

and (c) and (d) are not considered to be applicable. There are a number of cases under that Rule, some of which I picked up during the Court's noon recess, which may be of assistance in disposing of this matter. The case of *Momand vs. Paramount Pictures Distributing Company*, 6 Federal Rules Decisions 222, that case is of importance only in that it applies to the irregular manner in which this answer was tendered, since no motion for leave to file it was offered the Court, and the Court there held that such an amendment so filed without leave was—could be disregarded with no answer at all.

Miss Barnes: If your Honor please, I am not quite following Mr. McPherson. Just so that I am straight, if you don't mind, the Honorable Court in his decision and opinion on the motions that were before him, at the end of that said I had a certain date in which to file an answer, within the [9] 30 days, and the answer was filed within that time. Now the Government is taking exception to that answer. It happens, as I have already stated, that I talked to Mr. Lavine and he told me the several things that were wrong with it in the Government's opinion, so I came in with an amended answer that I thought should be satisfactory, excepting that I think that Mr. McPherson is trying to show a lot of other things that I don't think properly belong there. When he says the answer has not been filed yet, it was certainly offered as an amended answer to the Court and the copy was given to Mr. McPherson. What is he talking about now, the answer that was filed in compliance with the Court's re-

quest, was filed within 30 days or the answer that was brought in today, the amended answer?

The Court: He is talking about the proffered amended answer.

Miss Barnes: Well, he is referring to it as filed; I couldn't quite understand it. In other words, I don't think what he is reading applies.

The Court: I think in substance what he said is that under the facts of that case, even if it had been filed, it would have been disregarded.

Mr. McPherson: That is correct. Now in another case under this Rule, *Gaumont vs. Warner Brothers Pictures*, in 2 Federal Rules Decisions at page 45, the case simply held that although amendments to pleadings are freely given when [10] justice so requires, leave of the Court must first be obtained. And again in *Canister Co. vs. National Can Company*, 6 Federal Rules Decisions 613, the annotated note in 28 U.S.C.A. under Rule 15, at page 589, says:

"This rule does not permit a court to grant an amendment which seeks to add a defense which is obviously insufficient for the purpose for which it is offered."

We think this is particularly applicable to our case here. In a very recent case, *Fairbanks Morse Co. vs. Consolidated Fisheries* from the District Court of Delaware, in 94 Fed. Supp. which was reversed on other grounds in 190 Fed. 2d page 817, the rule was announced that an amendment to an answer which adds a new defense it not allowed when the defense itself would be insufficient. And

again in *Knitting Machines Corp. vs. Hayward Hosiery Company*, 95 Fed. Supp. 510, this rule was announced:

“Under this Rule”, meaning Rule 15, “amendments are granted with great liberality, but the Court should not grant an amendment to an answer which sought to add a defense which was obviously insufficient for the purpose for which it was offered.”

Miss Barnes: I don't know what this is all about, but I object to it on the ground that I am offering the amendment to the answer because the Government asked me to amend the answer and told me a great deal was wrong with my answer, and I have [11] tried to amend that answer in compliance with the Government's desire and what they want because I try to get along with the Government. As far as taking leave of any of my natural defenses that are a part of that case, I don't feel that I can do that. Therefore they are included in this amended answer. What I have tried to do is to please the Government on one hand, and on the other hand keep what I feel are my rights, my constitutional rights, in the case.

The Court: Well, Mrs. Barnes, as I see it, it isn't a question on your part of pleasing the Government. After all, the Government is certainly an adversary party. It has condemned your land, and you have the right, I have granted you the right to file an answer. Now you shouldn't file an answer to please the Government. You should file an answer to please yourself insofar as it is a proper legal

document responsive to the allegations in the complaint.

Miss Barnes: That is exactly with I mean, your Honor. I tried to file the document. We have no law library. We are working 130 miles off in the country and we are very, very busy and we can't get to town. So we filed the best answer we could. It was pointed out to me by Mr. Lavine that it was not a legal answer.

The Court: What you should do, of course, is to find out from the Court whether the document you want to file is a legal answer, rather than—— [12]

Miss Barnes: If the original document is a legal answer, in the mind of the Court, I would just as soon it stood, because I was not up here trying to amend the complaint. Mr. McPherson is making it sound as if I am trying to amend something. I am not trying to amend anything, I am willing to let the original stand, your Honor.

The Court: Well, you have proffered an amended answer.

Miss Barnes: I proffered it because——

The Court: Let's have Mr. McPherson complete his statement.

Mr. McPherson: I think that leave should be denied to the defendants to file this proffered amended answer insofar as it contains and sets forth the defenses numbered second, third, fourth, fifth, sixth and seventh, and prayer numbered four and two; the reason being that as the Court will observe from a very casual examination of them, each of these so-called separate defenses numbered

in series have all been asserted in the motions heard by this honorable Court, and disposed of by your order which is the law of the case, and they may not again be tendered as defenses in this suit so long as that order stands as the law of the case. I do not understand that any of the matters set forth in any of the special defenses so numbered tender any matter which has not been heard by and disposed of by this Court. Prayer number two is for the exclusion of the oil, petroleum, hydrocarbon and [13] minerals underlying the property, and prayer number four is for costs. Neither of those prayers are within the power of the Court to grant.

Miss Barnes: Your Honor——

The Court: First, Miss Barnes, let's review the situation.

Miss Barnes: I would just like to——

The Court: I would just like to clarify the situation. Now there was filed in this Court under date of November 14th an answer on behalf of the defendant Pancho Barnes, E. S. McKendry and William Emmert Barnes. The answer starts out "In answer to plaintiff's complaint, defendants Pancho Barnes, E. S. McKendry, and William Emmert Barnes admit, deny and allege as follows." Then you come down to paragraph three or four in your answer and you say in paragraph three, "The defendants deny generally and specifically all of the allegations contained in paragraph four of the complaint." Now do you have paragraph four, Mr. McPherson?

Mr. McPherson: No, I asked Mr. Eiland to bring it in.

The Clerk: Here it is, counsel.

The Court: Let's see, Mr. McPherson, exactly——

Mr. McPherson: What they are?

The Court: Yes, and first, you may follow, keep your copy of the answer that was filed November the 14th.

Miss Barnes: Your Honor, what's that about you can have as many defenses as you want? [14]

The Court: I have certain matters in mind. Now, have you got your copy of the answer?

Miss Barnes: Yes.

The Court: Now in paragraph one, you say the defendants, that means the three, deny generally and specifically all of the allegations contained in paragraph two. What is paragraph two?

Mr. McPherson: Paragraph two is the paragraph of the complaint in which the statutory authority for the acquisition is set forth and statutory references are given.

The Court: All right. Then in your paragraph two, of the answer of November the 14th, you say that the defendants deny generally and specifically all of the allegations contained in paragraph three.

Mr. McPherson: Paragraph three of the complaint alleges the public use for which the lands are taken as follows: "The lands are necessary adequately to provide for expanding needs of the Department of the Air Force and other military uses incident thereto."

The Court: All right. Now your paragraph three in that answer "The defendants deny generally and specifically all of the allegations contained in paragraph four."

Mr. McPherson: Paragraph four of the complaint alleges the estate taken for said public uses is the fee simple title subject to existing easements, public roads and highways, [15] railroads and pipelines.

The Court: All right. Then your paragraph four of the answer says: "The defendants deny that the land described in the condemnation complaint is owned by anyone except E. S. McKendry and William Emmert Barnes."

Miss Barnes: That is where I made a mistake, your Honor, and I will tell you why. I didn't realize a lessee is also an owner. Somebody explained to me that you can have leases for 99 years and that a lessee is also described as an owner. I really go on in the complaint and say I have an interest by way of a lease.

The Court: Now, in paragraph five of your answer of November 14th you say, "Pancho Barnes, aka Florence Lowe Barnes McKendry, does admit an interest in said lands by virtue of the fact that she is the holder of a lease thereon. The defendants E. S. McKendry and William Emmert Barnes deny that there are any owners of said lands except themselves answering paragraph eight."

Miss Barnes: I wrote it, your Honor, and I was quite wrong about the ownership. The amendment will correct it.



The Court: Well, let me——

Miss Barnes: I talked with Mr. Lavine about it in the office down there and those were the corrections that were made because that is what they want.

The Court: Now, going to the answer of November 14, [16] 1955, filed by Pancho Barnes.

Miss Barnes: That was the one that Mr. Lavine told me that the whole thing, as far as the value of the property went, had to be settled as to the value of the property, and then as you explained this morning, I believe, that if the property owners and lessees, and so forth couldn't get together it would take additional hearings to determine that. So I understand that. So I was removing that in favor of the new one that is supposed to comply with the other things. But I don't see why throw out my natural defenses.

The Court: I haven't indicated the throwing out of anything. I am trying to get down to what is before us. Now in this answer of Pancho Barnes filed on November 14th it is stated in the answer that she is the lessee of the subject property. Said lease was in effect since 1942, an additional lease was written in 1952 because of an additional owner, E. S. McKendry, and is now current and will be until 1976. Now it is my understanding that you want to withdraw the answer of November 14 filed on behalf of Pancho Barnes. You want to withdraw it.

Miss Barnes: I understand, your Honor, that it is superfluous, according to Mr. Lavine, and conse-

quently will be confusing, and he explained that to me and it makes sense to me. Therefore I think——

The Court: You have requested—— [17]

Miss Barnes: The request for withdrawing is only for substituting the amended complaint.

The Court: But you have asked that it be withdrawn, that is the answer on behalf of Pancho Barnes, and at the same time you have requested permission to file the amended answer.

Miss Barnes: In accordance with the government's request that I withdraw it. They wanted it.

The Court: I am not concerned about what the Government has requested you to do. The Government can't act as attorney for the Government or as officials of the Government and also as attorney for the landowners. You have either got to rely upon your own knowledge or you have got to get advice from some attorney of your own selection, who is not representing the Government.

Miss Barnes: I would like to withdraw the answer that I made substituting this answer that has been brought in as of today, the amended answer, but I would not want to withdraw the other one without the substituted answer being accepted.

The Court: I want to discuss with you a little bit the amended answer. Paragraph five of the proposed answer which you tendered this morning, says: "Answering the allegations of paragraph six", now is that the paragraph that sets up the legal description? [18]

Mr. McPherson: Paragraph six is the allegation in the complaint which sets forth the names of the

apparent and presumptive owners of the land set out after each tract number.

The Court: All right.

Mr. McPherson: It is not, however, as set forth in the answer, because as to Parcel L-2071 the record owner is Benjamin C. Hannam and Catherine May Hannam. I understand from Mrs. Barnes and her husband that they have some sort of a conveyance from those people who were the record owners and are the record owners at this time. However, it is not of record and the instrument cannot be found, and as to the other tract there are collateral interests of record which for the purpose of this answer need not be considered.

The Court: I want to call your attention to your proffered answer, in paragraph five. It says: "Answering the allegations of Paragraph six, defendants admit that the names of the owners of said lands are as follows:" Then Tract L-2040, you recite E. S. McKendry, Florence Lowe Barnes, then Tract 2043 you allege again William Emmert Barnes and Florence Lowe Barnes McKendry, then Tract L-2071 E. S. McKendry and Florence Lowe Barnes McKendry. Tract L-2072, E. S. McKendry, Florence Lowe Barnes McKendry. Now, what I want to find out, in the answer filed on November 14th the answer indicates that outside of having it leased from Mr. McKendry [19] and from the other Barnes, that you have no interest in the property; that you simply have a lease on it. That's what your answer of November 14th states; you simply have a lease from your husband and from your son. Now

the proffered answer is contrary to that and states that you are one of the owners, and your son's name doesn't appear at all, as an owner.

Miss Barnes: Yes, you read it there, your Honor.

The Court: He appears to be the owner of an interest in one tract.

Miss Barnes: Yes. He also in 1942 was the owner of another tract which was sold to Mr. McKendry in 1951. Now, here's the situation, your Honor. My husband and my son are the only record owners on the deeds recorded. I have a lease from them, but I have the rights and privileges of the property as far as the rentals and the buildings go, and according to what attorneys have told me that a lessee is also an owner, possibly not in the same extent as an owner as far as being able to deed the property, but they have an owner's rights in the property according to the lease, and that is what I went on in writing the second amended complaint, and is entirely on the basis I would have an ownership right by virtue of the lease. Otherwise, it is quite right, both statements are true as near as I can see. In other words, the first one was a pedantic true statement, true facts and the second one was taking into consideration the fact that a [20] person has a rather long term lease and has a business is in a sense an owner. That was explained to me by an attorney that I believe understands law pretty well.

The Court: Well, do I understand that your own interest in any of these tracts is that of a lessee?

Miss Barnes: Well, of course, I married Mr.

McKendry since the lease. In other words, I imagine I have acquired a certain interest possibly by marriage now that I didn't have at the time the leases were made.

The Court: Well, of course, ordinarily property acquired by a person prior to marriage, the general rule is that it remains his separate property. Now, that's the general rule.

Miss Barnes: Well, you just asked me, your Honor, and I answered. In other words, you asked me if that was the only interest I had.

The Court: Well, I want to state to you frankly, Mrs. Barnes, that it is the view of the Court that the special defenses which are set forth in the answer filed on November 14, 1955, by the three of you have no proper place in the answer. The Court on the motion to dismiss the complaint and on the motion to set aside the declaration of taking has ruled on all of those matters, and the Court will not permit those matters to stand in any answer that you file. The Court will, on motion, order them stricken. Now, I am talking about the [21] special defenses one to seven which appear in the answer filed on November 14, and also—well, I think there were more than——

Miss Barnes: They are very much the same, your Honor, the particular and special defenses are the same, I believe, in both answers.

The Court: Except that in the answer filed on November 14, there are eleven of them.

Miss Barnes: But factually they are the same.

The Court: The Court, if that is to be the an-

swer, would not permit those eleven defenses to remain in.

Miss Barnes: In other words, the Government makes a motion to throw them out and you will grant it, is that it?

The Court: I have already ruled once in passing upon the motion to dismiss.

Miss Barnes: Yes.

The Court: That those do not constitute legally any matters upon which the Court could dismiss the action. They are not defenses which will be heard at the time of the trial of this case.

Miss Barnes: Supposing, your Honor, I find something new that touches on those things. Would I be precluded from presenting it at the time of the trial?

The Court: I think that if it is merely evidentiary matter, relating to the same general subject, that the Court [22] would not consider those matters. In other words, the only matter that will be before the Court and the jury is just compensation at the time of the trial.

Miss Barnes: You feel that everything else as of this date is completely finished.

The Court: I say, from the standpoint of this Court, I think that my prior rulings are the law of the case and whatever form, whatever answer, the special defenses, whether eleven in number as set forth in your answer of November 14th, or seven in number as appear in the tendered answer, the Court would strike those matters from the answer.

Miss Barnes: All of them?

The Court: Yes, all of them. Now, I do think that it is important from your standpoint to provide in the answer who are the owners of the property in question, and that should be set forth in clear, unambiguous language in your answer. I think that a lessee of property has certainly a right to file an answer and set up his interest, the leasehold interest. Now, as I explained this morning when the hearing on just compensation comes on, it is the duty of the jury to determine just compensation for the entire interest, then if the claimants, the various people who claim an interest, are unable to agree among themselves how that award should be allocated, the law provides that after the value of the entire interest has been determined, a hearing can be had as [23] between the claimants on how the award might be allocated. So I want to say to you, I think you should set up in the answer your claims as to the holder of the leasehold. I think you should set forth who the owners of the property are. Now, the problem——

Miss Barnes: It is an interesting point there. We don't understand because we didn't understand what it was all about when the original appraisal was made by Mr. Evans. Mr. McKendry offered to show him the books and all about the leases and everything on the ranch, and he refused to look at any of them. He said he wasn't interested, that the Government wasn't interested in any books or anything of that kind, they were not buying a business, so he refused to consider that.

The Court: You will have, at the time of the

trial an opportunity to offer competent testimony on the fair market value of the property at the date of taking in whatever form that might take, as long as it is competent and relevant. The Court is not passing now upon the question as to whether or not your books and records and matters set forth in the lease might or might not be competent, and I want to also say this, Mrs. McKendry, to you, so you will be advised of the Court's views, if your interest, and I am speaking of you now, if your interest in the property is simply that of an owner of a leasehold, then the Court will have to restrict your representation to matters relating to that leasehold, and you will not be permitted, because you are not an [24] attorney, to represent owners of the fee. They will either have to represent themselves in proper persona, or they will have to secure the services of a lawyer licensed to practice or admitted to practice before this Court.

Miss Barnes: Well, the Government sued me and they originated the suit.

The Court: Up to this time, you have, in proper persona represented your husband and your son, and that has been under the belief of the Court that there was some joint interest of some character and in representing yourself you were also in effect representing the views of the other joint owners.

Miss Barnes: That was done, your Honor, because when this case first came on for hearing, at the first hearing, we were all doing the talking, my son, my husband and myself, and Judge Beaumont



selected me as spokesman and asked me to conduct the case.

The Court: I want to make it clear——

Miss Barnes: That is in the record——

The Court: I want to make it clear that I don't question for a moment that if Mr. McKendry, for instance, wants to represent himself at the trial, he will be permitted to do so. If your son wants to represent himself he will be permitted to do so. They will represent their respective interests. Now, in your case, you claim only—if you do [25] claim only a leasehold interest, you will be permitted in proper persona, to represent yourself, but only as to that interest. You will not be permitted as an attorney, because you are not an attorney, to represent the interests of your son and your husband. Do I make myself clear? I just want to advise you, because the Court intends to set this case for trial. It has been pending a long time.

Miss Barnes: It has not been pending, your Honor, nearly as long at 1201 has been, which is coming up on the 14th, or a great many others——

The Court: I am trying my best. I disposed of one in November, took a whole month, that was filed over four years ago and I have on the calendar for the 14th one that has been on the calendar, and I am going to put your case down for trial because I think in fairness to the landowners and people having interests in the property, and in fairness to the Government these cases should be disposed of as rapidly as all of the circumstances and exigencies surrounding them make possible, and as I say, the

Court is going to set the case for trial. I am just trying to outline to you what the procedure will be, so that you will have ample time to consider it.

Miss Barnes: Your Honor, as long as we are outlining these things, I would like to ask you a question. Should my husband and my son have an attorney representing them and their part, and I should be representing myself separately, those [26] cases would run concurrently, wouldn't they?

The Court: Oh, yes, certainly, it will be one case.

Miss Barnes: Don't you think that will be rather confusing?

The Court: We have many cases in which several attorneys are representing different claimants to the property.

Mr. McPherson: Fearful though I am of further confusing the issue, I think it is only fair since Miss Barnes is not an attorney, to state what our position will be on her right to participate in the proof of value. As we understand the law to be, the holder of a leasehold may not tender to the jury a separate valuation of the leasehold. They may be heard only on the value of the entire estate. In other words you can't value separately the leasehold and the real property and then aggregate the two. The only question before the jury is the value of the whole. The right of distribution is a separate inquiry, and will be heard separately. The lessee's interest is collateral.

Miss Barnes: I am interested in this. Naturally, when we look up things in a public law, such as Public Law 564 of the 81st Congress and the lan-

guage is so ambiguous in the Congressional Record,—in this case it said land for base expansion, and then went on and detailed other things in the \$26,000,000 was for developing field systems, and the land for base expansion, so we go back in the Congressional Record [27] and we find out just exactly what law Congress was passing and what they meant by it and what it was for and sort of to tie down this very wide open phrase “for base expansion” which could have meant anything, so we go back to rely upon the language of Congress to understand what they meant when they passed that law. Now, on this subject Mr. McPherson has just mentioned regarding the value of the land, and of the value of the lease, in that extent when Congress asked them what they were going to do with the money and what land they were going to get, they said—your Honor has it, I have no additional copies and your Honor asked me to put that in as an Exhibit, as a part of the record. It said we are buying the land and the operations on the land. That’s a quotation. I am sure that is correct although I haven’t looked at it for a month. It seems that to Congress there, the Air Force in explaining to Congress what they were going to do with that money under that law, broke it into there: they were going to buy the land and they were going to buy the operations on the land. Now Mr. McPherson has gone to the extent of saying that there is no difference between the land and the operations on the land, or, in my case, the lease, and yet in Public Law 564 they request specifically to Congress in

saying exactly what they are going to do under that law under which the property is taken.

The Court: I think what Mr. McPherson said to you was [28] this, and that is when it comes to the trial to determine just compensation a witness, an expert and it applies in the case of an owner himself, he can't testify that the soil is worth so much, and the buildings are worth so much and that the trees are worth so much and——

Mr. McPherson: Or the business on the property.

The Court: ——or the business on the property. In other words he must give his opinion as to the value of the whole property and the law is well established on that point and Mr. McPherson is simply giving you some timely advice or warning that when you come up to the trial you won't be permitted as the owner of the lease to get up and express an opinion as to the value of that lease at the time of the taking.

Miss Barnes: Well, I can have appraisers there, can't I?

The Court: Yes, but they will not be permitted to give their opinion as to the lease, the value of the lease. They will simply be permitted to give their opinion as to the value of the whole, what is taken.

Mr. McPherson: That, in our opinion, did not include the business.

Miss Barnes: In other words, that is in direct opposition to what Congress passed a law in which the words of the Congress that they were to buy the land and the operations. Of course, the Govern-

ment's opinion and Congress' opinion varies again.

The Court: Well, now coming back to the specific matter before us, if, Mrs. Barnes, you want to file the amended answer the Court will permit you to file it but the Court will order stricken from the amended answer all matters contained in that document commencing on line 20, page 2, commencing with the words "First Defense" and will strike down through line 21 which is part of the seventh defense which reads: "for any other military or public purpose or use" and the Court will strike paragraph two of the prayer which requests the hydrocarbon substances be excepted——

Miss Barnes: Just a minute.

The Court: ——and will strike four.

Miss Barnes: Are you going to strike about the minerals?

The Court: Yes.

Miss Barnes: Why?

The Court: Well, because it is a matter over which this Court has no power. The Government has elected to take the fee simple and this Court can't question the extent of the interest the Government seeks to condemn in the property. So what I wanted to say is that if you want to file this amended answer, the Court will permit it to be filed but the Court will order stricken the matters that I have detailed.

Miss Barnes: How much time have I got to make up my mind whether I wish to file or whether I wish to look it over in this case, and—— [30]

The Court: Will, I want to say this so you will

be completely advised, that if you don't care to file it, the Court will grant the motion of the Government in which it seeks to strike various portions of the complaint—the answer, filed on November 14, I believe.

Mr. McPherson: That is correct.

The Court: And also the motion to strike certain portions of the answer, the separate answer of Pancho Barnes. Now, I have indicated and if you want to withdraw the answer filed on behalf of yourself, the Court will permit you to do that, but the Court is not insisting right now that you make up your mind whether you want to do that.

Mr. McPherson: We have a motion pending to do that.

The Court: I know that.

Mr. McPherson: In your analysis, did you include that portion of the prayer, number four, the claim for costs? I didn't hear you.

The Court: Yes.

Miss Barnes: I have got a question——

The Court: Let me ask you this, Mr. McPherson, when do you intend to be in Fresno again?

Mr. McPherson: Well, I will be here on the 23rd of January for that hearing you just set this morning, but we will have an attorney here on the 14th on that trial set before you, 1201 and 1202. [31]

The Court: Well, I don't know whether that would be sufficient time for Miss Barnes to determine what she would like to do.

Mr. McPherson: That will be ten days.

Miss Barnes: I could not be here on the fourteenth. I have a prior——

The Court: Let me ask you this, can you be here on the 23rd of January?

Miss Barnes: I would try to be here on the 14th but I have to be a witness in a criminal case that day. Anyway, I plan to try to be up here on the 15th. I want to hear this trial, the Charley Anderson case.

Mr. McPherson: Why can't we dispose of it then?

Miss Barnes: Just a minute now. Are you granting a motion of the Government?

The Court: No, I have tried to explain to you what the Court feels it would have to do, but I am trying to give you the opportunity of being sure that you want to do exactly what you do.

Miss Barnes: What I want, what I am trying—since we are all being so above board—is to appeal this thing, get it up to the Court of Appeals. Consequently, if you grant the Government's motion, I believe that is an appealable thing.

The Court: I am not passing on the Government's motion.

Miss Barnes: What I am very anxious to do is to get this [32] motion granted so that I can presumably take this up, and not have this case in the place it was before, previous to appeal. But I think that now that you have quite definitely made the stand that you won't consider these things, and will consider nothing but the value of the property before the jury, I believe this is now appealable to

the Ninth Circuit Court of Appeals and consequently instead of dragging out these things and deciding when it will be convenient for me to make up my mind, my mind is made up on what I want. I want is to get our entire case up to the Circuit Court on any legitimate hearing that I possibly can.

The Court: But you want to see that you are properly advised. Now it may be, I am not sure, but it may be that these matters are reviewable only on an appeal from the final judgment.

Miss Barnes: There is a great deal of controversy on that. I believe a Circuit in the East somewhere allows them to come up. In Judge Fee's opinion he said it was appealable later or now, and he also said it was premature, that particular appeal was premature on that one point. But as I explained to the Court, I didn't want to be out of Court on it, and I have to make the appeal on it. Now, I am really anxious to go up to the Ninth Circuit on an appeal and I am very anxious to do that before the jury trial comes off because I feel that there won't be a jury trial. I believe the Ninth Circuit is [33] going to uphold the case. I don't feel that we will lose in the Appeals Court, and so I am very, very anxious now to be able to make that appeal and that is the only thing I want to do, so I don't like to set the date for the 14th——

The Court: In other words, you don't want any more time to decide what you want, you want to withdraw the answer you filed or have you decided you want to file the amended answer? You don't want any more time.



Miss Barnes: No, it isn't a question of that, your Honor. The question is this: what I want is an appealable action.

The Court: Well, the Court can only——

Mr. McPherson: May I accommodate her, your Honor? I will move that the Court rule on my motion to strike the portions designated in the motion, of the answer filed on November 14, and deny the defendants' proffer of the amended answer lodged with the Court today. That is to say, that portion commencing with the first defense, line 20 on page 2. Then she will have an order certain, whether it is appealable or not. I don't know.

Miss Barnes: Just a moment. We want to be able to file one appeal, and we figure that possibly if it was on the one on the 14th, there might be two. I want an order so we can make an appeal, because my appeal is going back to your opinion of the 17th. You see, what I want to do is to throw them out on the whole thing so I can appeal on the whole thing.

The Court: Then, what you want me to do is to rule on [34] the motions that were on the calendar, and you want to withdraw your amended answer. Is that right?

Miss Barnes: I am not sure. I don't believe so.

The Court: Well, I am trying to find out.

Miss Barnes: What I would like to do is to proffer my amended answer and ask Mr. McPherson—he said the motion follows my amended answer, in other words, his motion was to both answers. In

other words, let's lump the whole thing in together, then we are sure of it.

Mr. McPherson: No, you misunderstood me.

Miss Barnes: Let me say this. These defenses that the Government has asked to throw out of the answer, and which your Honor has said he was going to throw out of the answer, and which your Honor has ordered me to take out of the answer——

The Court: No, I haven't ordered it. I have just indicated to you that the Court intended to strike them.

Miss Barnes: That the Court did intend to strike them? Is that it?

The Court: Yes.

Miss Barnes: Well, if the Court intends to strike them, that, in substance, is the case, isn't it, your Honor?

The Court: Well,——

Miss Barnes: In other words, the striking then would be the same, no matter whether they were in the complaint filed November 14th or in the second answer as proffered today. It [35] would be the same situation.

The Court: What the Court will do, the Court will grant the motion of the Government to strike portions of the answer of defendant Pancho Barnes, in accordance with the motion filed at the hearing on November 13, and will grant the motion of the Government to strike portions of the answer of the defendant Pancho Barnes, E. S. McKendry and William Emmert Barnes, as set forth in the same motion. The Court will permit the filing of the

amended answer tendered today, but will strike, order stricken, all of the matters set forth in the first through the seventh defense, inclusive, including paragraph two and four of the prayer.

Mr. McPherson: I think only that portion of paragraph four of the prayer that has to do with the costs, is to be stricken.

The Court: Yes, that is right. And I will direct that the Government prepare the form of order, and serve a copy on the defendants.

Mr. McPherson: Then will the Court set the case for trial?

The Court: Then the Court will set the case for trial on—commencing on June 5, 1956 before a jury, and I will direct the Government to give notice.

Mr. McPherson: Yes, your Honor.

Miss Barnes: June 5. How long do you think it will [36] take, your Honor? You have one set for the 19th of June.

The Court: Well, I don't know how long it is going to take. I set aside approximately two weeks, and the only issue that will be before the jury at that time is just compensation. Now, if it takes longer than two weeks, we will have to take the additional time.

Miss Barnes: And with what we have done today, then, you have barred any further discussion before this Court at any time on anything excepting the just compensation. Is that correct?

Mr. McPherson: I submit that is not the case.

Miss Barnes: That is what his Honor said.

The Court: The question as to all of the matters that are put in issue by the complaint and answer will be considered at the trial, and the Court has already indicated to you its views concerning representation in proper persona and representation through counsel.

Miss Barnes: So whether we like it or not, we are going to have some legal help.

The Court: No, I don't say that at all. My point is that each defendant will be permitted to represent himself but no unlicensed person may, under the law, represent as an attorney some other litigant.

Miss Barnes: I don't know anything about law, your Honor, I have a sort of horse instinct for some of it, but [37] I have got an interest in that property, no matter whether it is by lease or by fee simple title or whatever it is, but my interest would be the same as it would be from the start, because you can't quibble just exactly how it comes in. If I want to represent myself and if they want me to represent them, I should think it would be six of one and a half dozen of the other as to what the interest was as long as that interest cannot be considered separately. Mr. McPherson says it can't be considered separately, so I don't know exactly—

The Court: Well, let me say this, Mrs. Barnes, you will be permitted to represent yourself, if you are so advised. Mr. McKendry will be permitted to represent himself and your son, the same thing, but you will not be permitted to appear in effect as an attorney representing the other defendants.

Miss Barnes: I understand that, excepting that if we are all in one case, and must be here together, then just as Judge Beaumont said, they chose me as spokesman.

The Court: I have tried to make clear the situation. Now, I think that's all.

Mr. McPherson: We have one other case.

The Court: I meant in connection with the Barnes matter.

Mr. McPherson: Yes, your Honor. [38]

[Endorsed]: Filed July 11, 1955.

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[Endorsed]: No. 15580. United States Court of Appeals for the Ninth Circuit. E. S. McKendry, Florence Lowe Barnes, also known as Pancho Barnes and William Emmert Barnes, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: June 12, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15580

E. S. McKENDRY and PANCHO BARNES,  
Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

STATEMENT OF POINTS ON APPEAL, AND  
DESIGNATION OF RECORD

The appellants hereby adopt the Statement of Points on Appeal and Designation of Record heretofore filed in the United States District Court, Southern District of California, Northern Division, in the above-entitled proceeding, and heretofore designated as a part of the record on appeal in the within proceeding.

Dated: June 19, 1957.

BEARDSLEY, HUFSTEDLER  
& KEMBLE,

/s/ By SETH M. HUFSTEDLER,  
Attorneys for Appellants.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 20, 1957. Paul P.  
O'Brien, Clerk.